IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 192

Suit 1448/1992, 1449/1992

Between

Management Corporation
Strata Title Plan No 1166

… Plaintiff

And

Chubb Singapore Pte Ltd

… Defendant

GROUNDS OF DECISION

Commercial Transactions — Sale of goods — Breach of contract; Commercial Transactions — Sale of goods; Commercial Transactions — Sale of goods

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

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Management Corporation Strata Title Plan No 1166 v Chubb Singapore Pte Ltd

[1999] SGHC 192

Suit 1448/1992, 1449/1992
G P Selvam J
21 July 1999

1 **Judgment:**

2 1.**GP SELVAM J**

3 ***The contract***

4

5 The apple of discord in this case is a crippled custom-built intercom videophone system which was installed at a cost of over $1m at 1985 value. The prelude to the dissension went as follows.

6 2.Some four decades ago Singapore was a city full of slums. Then it underwent a radical facelift. In consequence, it became a city full of plums. Mandarin Gardens, a huge luxury condominium complex constructed a decade and a half ago near a large park, is one such plum. It is located on the eastern sector of Singapore close to the sea. The East Coast Parkway separates it from the sea. It receives the rays of the rising sun from the South China Sea. It is

bounded by Marine Parade, Siglap Road and East Coast Parkway. The land area of the condominium is 25.5 acres (123,000 sq ft). There are nine high-rise blocks and eight low-rise blocks. All told there are 1,006 apartments. In addition, there are special purpose buildings. It has two entrances for vehicles - one at Marine Parade and the other at Siglap Road.

7 3.The developers of the condominium, Mandarin Gardens Pte Ltd, wanted a sophisticated security system to monitor the entry of residents and visitors to the condominium. The defendants, Chubb Pte Ltd (`Chubb`), tendered for the supply of the system. Their tender opened with these words:

> *We, Chubb Singapore Pte Ltd the undersigned offer to undertake the supply, delivery, installation, testing, commissioning and free maintenance for a period of twelve (12) months all the Works described in your Specification for the Supply, Installation of Security Communication Systems for Proposed Condominium Housing Development at Marine Parade/East Coast Parkway/Siglap Road, Singapore and further stipulate that a responsible person of our organization has read the entire Specification and agree to all conditions stated therein and evaluate the whole of the Works in conformity with the said Specification.*

8 4.Eventually they secured a commission for supplying and installing the videophone system and a few other items including close circuit television (CCTV), main gate video recording and main gate boom and control.

9 5.The name `Chubb` needs no introduction. It is seen islandwide. Their alarm systems warn thieves and trespassers to turn away from their targets. Their CCTV cameras keep a sharp eye on those who might be tempted to try. Their name, for well over a century, has been connected with safes and security systems. Their name and the very fact that they tendered for the sophisticated videophone system bespoken by the developers is clear evidence that they were specialist contractors and that the developer relied on their expertise and

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experience. In the Yellow Pages (Singapore Buying Guide) Chubb flourished this claim: `For 180 years, the international Symbol for total Security`. So they had a long-standing reputation to preserve.

10 6.A formal contract between the parties called `articles of agreement` was executed on 10 July 1985. It was an entire contract for a lump-sum price. It incorporated `the conditions` attached to it. Very few of the conditions applied to Chubb`s contract however.

11 7. ***The system***

12

13 The videophone system was to be constituted by an audio-video communication system. It was to allow visitors to the condominium to call and talk to residents in their individual apartments on their videophone from a visitor call unit (`VCU`) located at the Siglap Road and Marine Parade entrances. Residents in their apartments were also to be able to communicate with the security guards at the guardhouse on their guard house monitoring unit (`GHMU`) as well as obtain a signal from the security close circuit video cameras at the lift lobby of their respective apartment blocks. When a call from a VCU was made to a resident`s videophone, the audio and video signals from the VCU were to be switched on by a switching system to the called videophone through the main switching unit (`MSU`) at the respective guard house and a subsidiary switching unit (`SSU`) located at the foot of the block of the called apartment and its associated junction box (`JB`). There were in all two MSUs, 17 SSUs, eight VCUs and 57 JBs in the system. The MSUs so to say, were the nerve centres of the system.

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14 8.The system was completed, installed and handed over to the developers on or about 30 September 1986 (`the installation date`). The expression `handed over` in this context must be understood in a metaphorical sense because the system was not physically passed from the hands of Chubb to those of the developers. It was delivered by being installed. This meant that it was ready for continuous use by the management office of the condominium and the residents. As the condominium had just been completed actual physical occupation of the apartments was low. The full capacity of the VCUs and SSUs, therefore, could not be put to test for some time to come. Note that Chubb were still testing and monitoring the system even after the installation date. Further, there was a one-year defects liability period which ended on 30 October 1987. If there was any hitch or glitch in the system, be it in the individual units or the central processing system, Chubb were obliged to fix it. The residents and the guards therefore contacted Chubb directly for after-sale service. In the result the management and the residents in general were not fully aware of how the system functioned and how to mend it whenever something went wrong.

15 9.Although Chubb were the direct contractors, they had not designed and fabricated the system. They did not have the scientific knowhow and experience for such an engineering feat, and had sub-contracted out the design and construction of the system to a sibling company - Chubb Electronics (Hong Kong) Ltd (`Chubb HK`). The system was a prototype. It had not been tried out in a test bed under full operative conditions on site. In other words for both Chubb and Chubb HK it was an experimental project. In the circumstances, it remained to be seen whether it would meet everyone`s expectations under full operative conditions. The processor parts of the system, referred to as the `digital system`, were designed by Chubb HK to operate on a very low voltage (5V), which was lower than the voltage on which some portable transistor radio-

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cassette players function. Whether this low voltage was appropriate for an enormous project like Mandarin Gardens only time would tell. In other words, the proof of the pudding was in the eating. And there would be ample time and opportunity for Chubb to find that out and, if necessary, tinker with it for some years. This was because Chubb had exclusive de facto sovereignty over the entire system for some years under two agreements for comprehensive maintenance services. This was past the defects liability period. The first maintenance agreement was made on 27 February 1988 to take effect from 1 October 1987. The second maintenance agreement was signed on 5 August 1991 and became effective from 1 October 1991 for two years.

16 10. ***Problems with the system***

17

18 It is now necessary to tell a curious tale of what went on between Chubb and Chubb HK. It throws some light on the inefficiency of the system and how critical of the system Chubb were. On 21 April 1986, Chubb complained to Chubb HK that there were video and audio problems in the system. They expressed their dissatisfaction that Chubb HK `cannot choose to remain apathetic to the serious unresolved video and audio problems`. They further stated: `Please note that this distorted video was detected and reported earlier in mid February ... . The distortion on the video is certainly too extreme to pass off as a defect work.` The letter went on to assert: `We would also like to remind you that by your acceptance of our Purchase Order you have confirmed that your offer was free of any qualifications and that you would abide to the original and revised tender terms and specifications part of which would include the L/D charges`. It contained the following further grievances: `(1) ***The SSU has been***

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poorly designed . The video amplifier (VA) rack could not even fit into the SSU housing at the time of arrival. We had to cut the VA rack and relocate this panel. This relocation was discussed and finalised with your men on site at that time ... . (4) We find that some of the site modifications by make shift wire jumpers and components additional on vero boards on the various PCBs are useful only as a temporary measure in order that the system may be commissioned in time. This would not be acceptable as a long term feature as the reliability and integrity of the system would be easily undermined in the future and certainly unacceptable within the normal standard of a proper electronic PCB. As discussed with your WC Leung we look forward to your improved PCB to replace the above`. (Italics here and hereafter supplied by me).

19 11.There was another list of complaints on 11 August 1986. On 11 September 1986, 11 further complaints were listed in a letter from Chubb to Chubb HK. They related to the dysfunction of the system and non-compliance with specifications. The letter contained this telling paragraph:

> *The owners are now insisting that these features are to be provided. Please note that we have to clear all these defects latest by end of September, and this includes all those outstanding defects as listed out on 11 August 1986.*

20 All this was of course before the installation date.

21 12.On 13 October 1986, that is to say after the installation date, yet another list of complaints counting no less than 13 items was sent. Chubb, who were monitoring the system, kept these grievances close to their heart and did not reveal them to the developers. In the result the developers were blissfully ignorant of the flaws and faults in the system.

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22 13.Then on 9 December 1986 Chubb sent another sharply worded telex to Chubb HK. It read as follows:

> *RYT 0078 DD 5/12/86 on videophone system. Yr audio cards do not increase sound level significantly. Total system is still not 100% reliable in operation with frequent breakdowns. Pls advise how U can improve system operation`s reliability for us to settle final payment to you.*
>
> *Report of System`s breakdowns as follows:*
>
> 1 Total system`s failure six times between 13/11/86 to 9/12/86.
>
> 2 The IC 3487 in SSU`s N MSU`S AND J/B`S `extremely hot` during operation. This obviously is design fault. Pls adv solution we can`t keep on replacing I/C`s.
>
> 3 Still having problem with systems in H1, H5 N H7. Marine Parade Guard House can`t call H7 N H5. Both Guard Hse can`t call H6. Pls note that Siglap Guard Hse call to H4 is OK. Marine Parade Guard Hse call to L8 is OK. CPU/SSU of H1 also OK but Siglap Guard Hse still can`t call H1. Same problem persists with H5 N H7. System is very unreliable at present.
>
> 4 Zone cards failure still very high. Need to change components frequently.
>
> *Suggest you send down two of yr engineers to rectify all above design problems with practical solutions for total system`s reliability. Pls indicate when yr engineer will be available.*

23 Notice that what Chubb complained about was, to borrow a phrase from computer science, a systemic dysfunction.

24 14.An internal note dated 11 December 1986 from BL Tan, Manager, Electronic-Systems Division, to JM Williams, the MD of Chubb, read as follows:

> *Chubb HK is fully aware of certain design faults in the system and have confirmed they are still working on the solutions. Meantime, they insist we pay. Otherwise, they will not proceed*

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> *to liase the modifications done to improve system`s reliability. Please advise on this matter. Thank you.*

25 What Williams did in response was not recorded, or if recorded, not revealed.

26 15.On 22 December 1987 a fax message from Chubb to the developers read as follows:

> *Lightning Protection for Videophone System*
>
> *As submitted in our report to the Consultants, our letter ref SYS/CHY/1142 dated 30 October 1987, the installation of lightning protection have been completed. To date the videophone system has been performing satisfactorily, especially over the past three weeks where frequency of heavy rain has been fairly frequent. We do however wish to confirm that we will undertake to continue to monitor the situation and take every step necessary to ensure the system continues to perform satisfactorily.*

27 16.The history of the dispute between Chubb and Chubb HK made it abundantly plain that when Chubb `handed over` the system to the developers, unbeknown to the developers, they had a lemon in their hands and Chubb were still tinkering with it. The famous words of the medieval poet Dante would aptly apply to the system: `Abandon hope, all ye who enter here`. Yet, on 19 January 1988, some three months after the expiry of the defects liability period, Chubb happily received the final tranch of the price of the system. The business relationship between the parties and Chubb`s control over the system continued under the maintenance agreements as Chubb was receiving maintenance fees from their counterpart. Under these agreements the management of the condominium paid Chubb a service fee ranging from $3,500 to $9,500 per month.

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28 17.Although it is somewhat out of chronology I now have to turn my attention to certain documents as they go to the heart of this case. The management of the developers on 11 November 1988 complained about a partial breakdown of the system. The relevant part of the complaint read as follows:

> *We represent the owners of Block H2, Mandarin Gardens and we wish to lodge a complaint on the operation of the Chubb security video monitors that are located in each apartment unit.*
>
> *For the past three weeks, we had repeatedly informed your operation personnel of the malfunctioning of the said system for the entire block. To date, the video monitors in the units are not working and remained unrectified.*
>
> *Such a state of affairs is definitely unsatisfactory to say the least.*
>
> *We would certainly appreciate your personal attention in this matter and have the problem solved soonest.*

29 18.On 30 November 1988, that is more than two years after the installation date, Chubb sent the following telex to Chubb HK:

> *Thank U for yr kind hospitality during my recent visit. Would appreciate if U could get WC Leung to despatch the technical drawings of Mandarin Gardens to us urgently. We intend to upgrade certain parts of the system. Pls treat my request as urgent.*

30 And so, Chubb were without the drawings for over two years. This was a serious breach of the contract between Chubb and the developers who of course were not fully kept advised of the hitches and glitches in the system which were known to Chubb. These problems had to be solved under the maintenance agreement. They had to be remedied because they were breaches under the supply contract.

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31 19.On 9 May 1989 BL Tan of Chubb sent a note to JM Williams saying that `there is something seriously wrong here and I would like a discussion with you, and any such colleagues as you may wish to have, so that some sort of action can be taken immediately to resolve this.`

32 20.In an undated memorandum, but said to have been written in late September or early October 1989, Chubb argued for the burial of their videophone system and recommended that it be replaced by another system. It was a report by Eric Lim of Chubb. This is the most important document in this case. The memorandum contains for the first time several damaging admissions by Chubb. The relevant parts read as follows:

> 1.1 The present videophone system has been operating in an unstable manner with frequent breakdowns from time to time since the day it was commissioned.
>
> 1.2 Apart from the deterioration on most of the field equipment, the system has been subject to severe lightning strikes on several occasions which caused further damages to the sensitive electronics parts whilst aggravating the situation.
>
> 1.3 The causes for the breakdown of the system are outlined below:
>
> (i) RS232 signals and 5V low voltage supply were being used for data transmission which was found to be not suitable for long distance operation. The maximum operating distance for this mode of transmission would be 15 to 30 metres depending on cable size.
>
> The suitable mode of transmission would be to use current loop RS485/24V which can operate up to more than a distance of 10 to 26 KM.
>
> (ii) On-board modification to MSUs, SSUs, junction box.
>
> (iii) Inadequate built-in protection to power supply units of all MSUs, SSUs and junction box.

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(iv) The underground multi-core cables were not screened causing interference to signal transmission resulting in unstable operation leading to system hang-up.

(v) System fully customized.

1.4 In conclusion, the endless chain of problems encountered with the system to-date are far too complex, costly and time consuming for any technical personnels or companies to resolve.

In spite of the above, the performance and reliability of the system would still be questionable even after it could be restored to its normal operational state.

2 Alternative Proposal

2.1 In view of the above situation, we would strongly recommend to replace the entire system with latest `COMELIT` Digital Calling System (DCS) as an alternative which is also the original manufacturer for the existing monitor unit.

2.2 The advantages and some of its salient features of the proposed DCS system are highlighted as follows:

I Simplicity in Design

Employing digital transmission techniques thus eliminating the use of MSUs, SSUs, Zone Cards and Softwares.

II Minimum Cabling Networks

Just 8 wires plus 1 coaxial cable for the whole system ensuring interference free operation as the transmission of digital signals are via coaxial cables and operating at 26 volts DC level.

III Simplicity In Installation

Mainly uses 2 types of basic equipment throughout the entire system installation namely distribution amplifiers, programmable decoder cards and some switching equipment.

IV Ease of Maintenance

All spare parts are standard and readily available from the manufactures and easily field replaceable reducing downtime at site.

V Robust and Aesthetic In Design

The new visitor call units and master porter are made of weatherproof die-cast aluminium material with slim and functional design.

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> VI Power Supply With Built-in Protection
>
> All power supply units are stabilized and protected against short-circuit and overloading.

33 It is to be derived from the above that the system was a virtual write-off from the outset, that is it was unmerchantable and unfit for the purpose for which it was commissioned from the installation date. Chubb had been applying symptomatic treatment to what was essentially a systemic failure. They papered over the structural faults and inherent failures in the system. All `advantages of the recommended system` ought to have been in the Chubb system but were inexplicably absent from it. Time had come to say good-bye to the system. In their unconscious mind Chubb wanted to walk away from it and waited for an opportune moment.

34 21.In the minutes of a meeting held on 25 October 1989 it is recorded that `Chubb was aware that the VCU and videophone had been inoperative for a year and that residents were being inconvenienced with breakdowns. Mr Loo said that the breakdown was due to an inherent design default.`

35 22.Then a note of 5 January 1990 contains the following:

> *MSU 1*
>
> *The main CPU board has many modifications carried out to its PCB. The drawings provided does not tally with the circuitry. The backplane inter-wiring connection with various CHMP, VCU audio Board and the underground cablings has no accurate document.*
>
> *The board is able to communicate with its VCU and GHMP after some hardware repairs except its communication link to SSU.*
>
> *MSU 2*
>
> *Power up MSU 2, found it was not working and is unable to work at all. Lots of modification to its PCSB.*
>
> *SSU*

> *There was no drawing for the main PCB and the backplane wiring interconnections.*

36 23.Next, a fax communication of 27 April 1990 from Chubb to the developers listed six problems. By that fax Chubb attempted to point out the eggregious deficiencies in the system. The note identified the problems in the following words:

> *Further to our meeting on 25 April 1990, and as per your request, I list below the various problems which contributed to the system`s breakdown:*
>
> *Problem 1*
>
> *The serial communication IC`s 3487 and 3486 has current overloading problems, as such frequent failure is experienced in the system. It involves the whole system.*
>
> *Problem 2*
>
> *Extensive hardware modifications to the existing MSU boards and SSU board at block HR9.*
>
> *Problem 3*
>
> *Current communication mode between MSUs and SSUs is done on a serial link. As such if one SSU experiences power supply failure, the whole system `hangs`, resulting in many users` complaints. Although the existing system uses relay for automatic bypass, the failure if experienced by one high rise block is about 10% of the total number of apartments.*
>
> *Problem 4*
>
> *Misalignment of keyboard due to mechanical fastening problems, wear and tear.*
>
> *Problem 5*
>
> *Unbalance video and audio signal level at tenant`s videophone sets causing poor communication.*
>
> *Problem 6*
>
> *Location of Mandarin Gardens condominium is very prone to lightning strikes, causing damage to the electronic components from time to time.*

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37 24.Last in this series of documents was a letter dated 11 October 1991 from JM Williams of Chubb to IR Masters of Chubb Australia. Williams repeated the recommendation for the system to be coffinned and sent to the graveyard. In doing that, Williams in effect made a devastating admission that what Chubb supplied was not what they had contracted to supply. It read as follows:

> *You will recall that there has been a saga of events relating to the Communications System at Mandarin Gardens and the System has never worked satisfactorily since its installation about seven years ago. During recent discussion with the Management I undertook to have a further look at the complete installation with a view to recommendation and this we did two days ago. I propose to recommend that there is no point in continuing to try and make the existing system work. It is far too complicated, it`s basically a one off and with the benefit of hindsight a poor design. We have spent a lot of money on re-developing the software and to find that we now have problems with the hardware.*
>
> *I have asked our Electronics Division to prepare quotations for a far simpler System and when we have got the prices, I propose to put that submission to the Management Committee. I suspect that they won`t like it but I think that we are now just pouring good money after bad. I think one of the problems was that they asked for a far too sophisticated a System and were allowed to have it, which was a mistake.*
>
> *This is just to keep you in the picture. As you know, it was a major project; the condominium having just over 1,000 flats.*

38 25.It is to be noted that the above problems were inherent vices in the system, dwelling in the system from the beginning and Chubb in law were responsible for them.

39 26. ***Another serious malady in the system***

40

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41 The above narration does not set out the complete aetiology of the disorders in system. There was a more serious malady in it: whenever there was lightning in the vicinity, the system would suffer a casualty and become crippled. Chubb, as a matter of routine, would send their technicians to revive it but seldom, if ever, with immediate and complete success. The following outlines the chapter of the major casualties and I have to backtrack a little.

42 27.In a fax message dated 9 October 1987 the developer`s consultant engineers, United Projects Consultants Pte Ltd (`UPC`) listed a number of complaints about the video phone system. They said, among other things, `The VCU system was affected by recent lightning, Chubb to install protection in the incoming line to prevent future failure during thunder storm.` It was like a patient advising a specialist physician on the diagnosis and therapy for the disorder.

43 28.On 26 March 1991, JM Williams, the managing director of the defendants, gave a solemn assurance to the plaintiffs as follows:

> *You will recall that when these problems were identified, we gave you the undertaking that we would not walk away from this problem and that we would put it right.*

44 29.Then there was a meeting between Chubb and the management corporation (`the MC`) of the condominium in which Chubb revealed that as the breakdown followed a lightning strike they would be contacting Sankosha Engineering (S) Pte Ltd (`Sankosha`), a company specialising in lightning protection to look into the problem. Sankosha, however, was unable to provide a satisfactory prophylactic and the system continued to suffer casualties after thunderstorms. Chubb`s position was that as the videophone system was a customised one they needed some time to investigate the performance

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parameters and operation. It was another way of saying that the system was an incompetent innovation and they did not know how to put it right. Then they engaged another specialist, 8M Security & Engineering Company (`8M`), to look into the problems and propose solutions. 8M was engaged but to no avail. As Chubb were slowly groping around for a solution, on 9 October 1991 Zeus, the thunderer, who had an affinity for highrise buildings near the sea, struck again and the system was put to final rest.

45 30.The opportune moment to wash the hands off the system had arrived. Very soon after that, in abject disregard of that assurance and assumption of responsibility, the defendants walked away from the scene leaving a lot of junk behind them. To exacerbate matters they also took with them some zone cards without the knowledge of the plaintiffs. They walked away probably in the hope that everything was over. But it was not to be because the shouting continued. The plaintiffs converted their grouses into legal actions.

46 31. ***The suits***

47

48 There are two actions - Suit No 1448 of 1992 and 1449 of 1992. In Suit No 1448 of 1992 the cause of action vested originally in the developers. The cause of action became vested in the plaintiffs, that is, the MC, following an assignment. The claim in Suit No 1448 of 1992 was as follows:

> *The plaintiffs` claim is for damages for the defendants` breach of an agreement dated 10 July 1985 for the supply and installation by the defendants of a security and communications system.*
>
> *Further or in the alternative, the plaintiffs claim damages for loss arising from the defendants` negligence in connection with the supply and installation of the said security and communications*

> *system and/or the performance of the defendants` duties and stipulations.*
>
> *The plaintiffs also claim the costs of this action and interest pursuant to s 9 of the Civil Law Act (Cap 43).*

49 32.The claim in Suit No 1449 of 1992 was as follows:

> *The plaintiffs` claim is for damages for the defendants` breach of two agreements dated 27 February 1988 and 5 August 1991 respectively (hereinafter called `the maintenance agreements`) in relation to the provision of comprehensive maintenance services for a security and communications system supplied and installed by the defendants pursuant to a separate agreement dated 10 July 1985.*
>
> *Further or in the alternative, the plaintiffs claim damages for loss arising from the defendants` negligence in the performance and/or discharge of the defendants` duties and obligations under the said maintenance agreements and/or the defendants` negligence in failing, refusing and/or neglecting to provide comprehensive maintenance services to the said security and communications system pursuant to the said maintenance agreements.*
>
> *The plaintiffs also claim the costs of this action and interest pursuant to s 9 of the Civil Law Act (Cap 43).*

50 33. ***The statement of claim***

51

52 The plaintiffs` core assertions were that from about March 1987 the videophone security system began showing signs of operational problems. Finally, on or about 24 December 1988, the system broke down completely and remained out of commission. The defendants failed to rectify or repair the system. The essence of the legal basis of their claims against Chubb read like this:

> *The failure, breakdown and/or non-functioning of the videophone security system was caused by the defendants` breach of the maintenance agreements and/or breach of the*

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> *express and/or implied terms/conditions and/or the defendants` negligence in failing, refusing and/or neglecting to provide good and effective comprehensive maintenance services to the videophone security system. Further or in the alternative, the defendants, have failed and/or neglected to maintain the videophone security system in an operational or usable state.*

53 34.The above paragraph was a cocktail conception in pleading, a messy mosaic of several causes of action infused into one weighty discourse. To exacerbate matters, it failed to set out any point of law to co-relate the facts to each cause of action. It would have been a convenient course for the plaintiffs to set out the points of law. But they were not required to so because O 18 r 11 of the Rules of the Supreme Court 1970 excused them from doing that. The rule said that: `A party may by his pleading raise any points of law`. It did not say that points of law must be stated. The plaintiffs alluded to some law in their submissions. Even then they failed to refer to applicable statutes until after they were directed to do so by the court at a much later stage.

54 35. ***Keeping tort out of contract***

55

56 Taking the pleadings as they are I shall first consider a preliminary point. It will be noted that a cause of action in tort (scil negligence) has been slipped into the statement of claim. This, in my view, was a non-sensible course of action. The reason is this: in **Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank** [1986] AC 80, Lord Scarman delivering the judgment of the Privy Council said at p 107:

> *Their Lordships do not believe there is anything to the advantage of the law`s development in searching for liability in tort where the parties are in a contractual relationship. This is particularly so in a commercial relationship.*

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57 That statement, to my mind, is a capsule containing profound wisdom. If anything, it is a classic understatement because different consequences follow according to whether liability arises from contract or tort. In certain circumstances infusion of a claim in tort into a contractual scenario can negative the advantage of the strict liability rule applicable to certain claims founded in contract. I shall now elaborate this point.

58 36. ***Taxonomy of standards of duty and liability***

59

60 For practical purposes the law of contract recognises two distinct standards of duty and liability: (i). the strict liability rule;

61 (ii). the rule of due care and diligence, sometimes called reasonable care and skill;

62 There is yet another standard called the `absolute standard of liability`. This is seldom, if ever, encountered in practice. I shall, therefore, say nothing more about it.

63 37.The strict liability rule imports duty and liability without fault or negligence. It is an obligation which can be breached despite the exercise of all due care on the part of the contractor. Innocent and unintentional breaches will attract liability if a duty based on strict standard is imposed. This standard is imposed in commercial contracts such as the sale or supply of goods.

64 38.This is restated in the following proposition in ***Benjamin`s Sale of Goods*** (5th Ed) at para 14-110:

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> *Strict contractual liability*
>
> *One important feature associated with a breach of the implied terms as to the correspondence with description, satisfactory quality and fitness for the purpose is that liability is strict. In other words, the seller may be liable even though he has exercised all possible care. This is particularly important when personal injury or property damage has been caused by the breach. Although such strict liability clearly attaches to consumer sales, the leading authorities are to be found in commercial cases.*

65 39.Three recent House of Lords decisions serve as legal beacons on this proposition of law: **Henry Kendall & Sons v Wiliam Lillico & Sons Ltd** [1969] 2 AC 31 (HL), **Ashington Piggeries Ltd v Christopher Hill Ltd** [1972] AC 441 (HL) and **Young & Marten Ltd v McManus Childs Ltd** [1969] 1 AC 454 (HL).

66 40.In ***Henry Kendall*** , Lord Reid stated that the fitness of purpose rule `covers not only defects which the seller ought to have detected but also defects which are latent in the sense that even the utmost skill and judgment on the part of the seller would not have detected them.`

67 41.In ***Ashington Piggeries*** the plaintiffs, Christopher Hill Ltd, supplied feeding-stuff compound to the defendants who refused to pay contending that the goods supplied did not correspond to description, were not reasonably fit for the required purpose and were not of merchantable quality in that the food-stuff contained a toxic agent, a chemical DMNA, which though unfit for mink was fit for other animals. Lord Diplock at p 498 said `It was no one`s fault that the Norwegian herring meal which was an ingredient of the compound feeding-stuff for mink made the food poisonous to those animals. At the relevant time the possibility of the chemical reaction which produced the toxic substance DMNA in the course of manufacture of the meal was unthought of. In the then state of

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knowledge, scientific and commercial, no deliberate exercise of human skill or judgment could have prevented the meal from having its toxic effect upon mink. It was sheer bad luck.` He then asked the question: `Who is to bear the loss occasioned by that bad luck?` The answer was: the sellers; because they were in breach of the implied warranty of fitness.

68 42.In ***Young & Marten Ltd*** the buyers specified particular tiles made by only one manufacturer. The suppliers duly obtained the tiles in the ordinary course of trade and fixed them in the roof of houses. Due to faulty manufacture the particular tiles used had an undetectable defect which made them liable to break in frosty weather. The disintergration of the tiles began less than 12 months after the roofs had been constructed. Some 4,000 replacement tiles were fixed. The remedial works proved insufficient. The buyers sued the suppliers for breach of contract claiming the cost of completely retiling the roofs of the houses. It was held that the suppliers were responsible for the defect in the goods even in the absence of fault on their part and even though their claim against the sole manufacturer of the tiles was time-barred. On the point that the choice of the tile had been made by the buyers Lord Pearce said at p 470:

> *It is frequent for builders to fit baths, sanitary equipment, central heating and the like, encouraging their clients to choose from the wholesalers` display rooms the bath or sanitary fitting which they prefer. It would, I think, surprise the average householder if it were suggested that simply by exercising a choice he had lost all right of recourse in respect of quality of the fittings against the builder who normally has a better knowledge of these matters. Of course, if a builder warned him against a particular fitting or manufacturer and he persisted in his choice, he would obviously be doing so at his own risk. And a builder can always make it clear that he is not prepared to take responsibility for a particular kind of fitting or material.*

69 Lord Upjohn stated the principle of the strict requirement of merchantability in these words: `It is not in doubt that at common law (***Randall***

v Newson) and now s 14(2) Sale of Goods Act 1979 a vendor is under an implied obligation to warrant to his purchaser the quality of his goods against latent as well as patent defects. It was argued that at all events the contractor of labour and materials should be under no such obligation in relation to latent defects. ... I am unable to accept this argument - (unsupported as it is by any authority) which is, in my opinion, untenable in principle`. The following further lines of Lord Upjohn gave a lucid illustration of the principle:

> *The appellants were instructed to supply a particular type of tile which inherently was of high grade quality and well fitted for its purpose and so the implied warranty would apply unless the circumstances were sufficient to exclude it. In my opinion, the fact that the appellants were instructed to supply in terms a Somerset 13 red tile is not sufficient to exclude such implied warranty, which must be judged as at the time of the contract. This is not a case analogous to those cases where the employer may have ordered the contractor to supply certain particular goods which are found to be inherently unsuitable for the purpose. Such cases may give rise to many difficult factual and legal problems. The truth is that the appellants, through no fault of their own, had the misfortune to supply a particular batch of tiles which failed to conform to the proper standard of quality and fitness. I can see no reason why they should be absolved from their implied obligations.*

70 43. ***Due diligence standard***

71

72 The standard of due care and diligence, that is the standard of reasonable care and skill, is self-explanatory. This standard is applicable to contracts for works and services where the predominant feature is the application of mental or physical effort and experience. So the Supply of Goods and Services Act 1982 (UK) by s 13 provides that `In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill

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73 44.That is also the position at common law. In ***Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank*** the law of contract imposed on a banker`s customer the standard of due care because it was concerned with the conduct of a customer. In that case it was accepted that in tort there was a similar and but not a greater duty. The bank in that case asked for imposition on their customer duties in contract and tort. The Privy Council held that the banks, in the absence of express terms, could not rely on the law of tort to provide them with greater protection than that for which they had contracted. The circumstances of that case were such there was no bar to raising issues based on contract, that is to say the contractual relationship was not out of the case. ***Tai Hing Cotton Mill*** does not put forward that parties to a contract can never rely on tort to seek redress. It is a given that liability in tort and contract may co-exist. However, it is also well-settled that by founding a cause of action in tort one cannot avoid the exemptions and limitations imposed by contract between the parties. This position was affirmed in a later decision of the House of Lords: **Henderson v Merrett Syndicates Ltd** [1995] 2 AC 145 (HL). In the result the true proposition is that unless there is a definite advantage in founding a claim in tort, it would be unwise to infuse it into what is essentially a claim in contract.

74 45.In the present case the obligations of the defendants under the law of contract were more onerous and at any rate not lesser or narrower than under the duty in tort. There was nothing to bar the plaintiffs` claim in contract. They could avail themselves of the advantage of the strict liability rule if they founded their claim in contract. Accordingly there was no advantage in asserting the claim in tort at the same time. To put it in another form adding a claim in tort when contract would afford the solution may amount to `painting the lily, throwing a perfume on the violet or adding another hue to the rainbow - an

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utterly wasteful exercise`. I shall therefore sidestep the claim in tort and focus on the contractual bases.

75 46. ***Taxonomy of `goods contracts`***

76

77 Having sidelined the issue of liability in tort I now proceed to characterise and classify the various types of contracts by which goods, materials, labour and services are supplied and the implied terms which are interposed into such contracts by force of law. This is necessary to determine the implied terms that are by law integrated into the contracts at hand and the consequences of the integration. Further, it helps to avoid the confusion of applicable concepts governing liability.

78 47. ***Contract of sale of goods***

79

80 First, the contract of sale of goods. A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in the goods to a buyer for a money consideration, called the price. See s 2 of the Sale of Goods Act 1979 (UK) (`SOGA`). The expression `contract of sale` includes an agreement to sell as well as a sale. All tangible movable property to be delivered in that state is considered as goods. Application of workmanship in crafting the article, however enormous and complicated it may be, does not take the property out of the statutory definition of `goods` or `contract of sale of goods`. A ship, for instance, is considered as `goods`. As Nagendra Singh puts it in ***Shipowners (British Shipping Laws)*** (1967) `Every agreement to sell,

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whether twopennyworth of toffee or a trans-Atlantic liner, is subject to certain contractual stipulations, express or implied, with reference to the subject matter of the sale. If the seller is in breach of one of the stipulations, the buyer is given an appropriate remedy by the Sale of Goods Act 1893`. See also **Hyundai Heavy Industries Co Ltd v Papadopoulas** [1980] 2 All ER 29[1980] 1 WLR 1129.

81 48. ***Implied terms in a contract of sale of goods***

82

83 The terms that are, by law, namely, the SOGA, married into a contract of sale of goods, in so far as they are relevant for the purposes this case, are as follows.

84 49. **Sale by description**

85 Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description - see s 13 of SOGA.

86 50. **Merchantable quality**

87 When the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality. In other words, the goods must be `as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect of having regard to any description applied to them, the price (if relevant) and all other circumstances`. See s 14(3) of SOGA.

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88 51.For this purpose it is unnecessary to establish exclusive reliance on the seller`s skill and judgment. If matters such as the choice of sufficient and necessary components and the nature and properties of the components are peculiarly within the skill and judgment of the seller, the seller assumes the responsibility. See **Cammell Laird and Co Ltd v Manganese Bronze and Brass Co Ltd** [1934] AC 402.

89 52. **Reasonable fitness for purpose**

90 Where the seller sells goods in the course of business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought there is an implied condition that `the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied`. See s 14(8) of the SOGA. This is especially so when the customer pays a huge amount of money as the price for a thing to be custom-built. A breach of this condition enables the buyer to rescind the contract. In cases where the buyer does not rescind or is unable to rescind, in effect, it is a warranty - that is to say the breach will entail a claim for damages only.

91 53.The fitness for purpose rule in SOGA was a statutory enactment of the common law rule which Lord Macnaghten had formulated in **James Drummond & Sons v EH Van Ingen & Co** [1887] 12 App Cas 284 at 295 as follows:

> *A manufacturer who agrees to supply goods to order, knowing the purpose for which they are required, thereby impliedly undertakes to supply goods fit for the purpose in view.*

92 In one sense fitness for purpose may connote a general purpose such as when a car is purchased for driving on the roads. Fitness for purpose in that sense also includes good quality, that is merchantability. If the car is not fitted with proper brakes or if the radiator breaks down or if the sun-roof is stuck in open position on hot days it would be unfit for the purpose for which it was sold. Fitness for purpose may also apply to a specific purpose communicated to the seller or supplier such as when the coast guard orders a vessel for chasing pirates. If the engines of the vessel supplied heats up at high speed and breaks down each time the coast guard gives chase it would be utterly unfit for the specified purpose. The suppliers cannot escape responsibility by saying that the vessel can go at low speeds. As Lord Morris said in **Henry Kendall & Sons v Wiliam Lillico & Sons Ltd** [1969] 2 AC 31 at p 93:

> *Sometimes the purpose of a purchase will be so obvious that only one purpose could reasonably be in mutual contemplation. An only purpose or an ordinary purpose may therefore a particular purpose. Sometimes a particular purpose will be made known expressly: sometimes it will be made known by implication.*

93 54.Moreover, when goods have only one use in the ordinary course of things, and are not fit for that one use they are not of merchantable quality. See **Grant v Australian Knitting Mills Ltd** [1936] AC 85.

94 55. ***Goods defined***

95

96 The word `goods` is defined by the Sale of Goods Act to include all `things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale`. The use of the word `include` makes it plain that what is mentioned in the definition are special cases. It leaves

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unaltered the commonly accepted meaning of the word `goods`. Further, it is clear that mere attachment of things to the building does not exclude them from the definition of the word `goods`. Under conceptions of land law a thing must be either a ***fixture*** , that is land (immovable property), or a ***chattel*** (movable property). The conceptions derived from land law, therefore, determine whether a thing is a fixture or chattel for the purpose of `sale of goods` or `supply of goods`. For this purpose, in addition to the traditional tests of `degree of annexation` and `purpose of annexation` a third test should be added: if the functionality of the thing is not indefinite but limited and the thing is intended to be replaced periodically without causing substantial damage to the immovable property, then it will be considered a chattel. Things such as curtains, telephones, airconditioners, telephone, cable-television and sound systems are all to be considered as `goods` and therefore come within the ambit of the Sale of Goods Act 1979.

97 56. ***Implied terms in contract for supply of goods***

98

99 For the purposes of this case, a `contract for supply of goods` is a contract for the transfer of goods. This expression means `a contract under which one person transfers or agrees to transfer to another the property in goods other than by a contract of sale of goods`. See s 1(1) of the Supply of Goods and Services Act 1982 (UK) (`SUGSA`).

100 57.In the case of a contract for the supply of goods the following terms are statutorily and compulsorily implied into the contract: (a). Where property is supplied in the course of business, there is an implied condition that the goods

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supplied under the contract are of merchantable quality. This means that the goods are to be as fit for the purpose or purposes for which goods of that kind are commonly supplied as it is reasonable to expect having regard to any description applied to the goods, the price (if relevant) and to all the relevant circumstances. See s 4(2) and (9) of SUGSA. (It is to be noted that this provision is identical to that in the Sale of Goods Act 1979.)

101 (b). Where, expressly or by implication, the buyer makes known to the seller any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied. See s 4(4) of SUGSA. (It is to be noted that this provision is identical to that of the Sale of Goods Act 1979.)

102 58.All the observations I have made on the definition of `goods` under the `sale of goods` head apply to contracts for supply of goods within the meaning of SUGSA.

103 59. ***Contracts for works and materials***

104

105 A contract for work and materials is a contract the subject matter of which is the performance of services, even though it incidentally includes the sale or supply of some goods. Performance of work or services is the primary contract. Because neither `work` nor `services` are goods, such contracts, in general, are outside the ambit of SOGA and the goods part of SUGSA. Sometimes it can be a hybrid contract - comprising the elements of both. For example, in **Hyundai Heavy Industries Co Ltd v Papadopoulos** [1980] 2 All

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ER 29[1980] 1 WLR 1129 a shipbuilding contract was considered as a contract of sale of goods and at the same time a building contract. It was a contract for sale of goods because the end-product was a chattel. It is well accepted that a contract for the construction or renovation of a land structure is a contract for work and materials and not sale or supply of goods. In such a scenario property in things passes to the buyer not by delivery or installation but by accession when the thing inseparably merges into the building. In such a contract the end-product is not a chattel but a permanent structure and therefore the material becomes part of the immovable property.

106 60. ***Implied terms in contracts for work and materials***

107

108 ***materials materials*** It is settled law that according to the principles of the common law, in a pure contract for work and materials the following warranties will be implied into it: (a). that the used will be of good quality (equivalent to merchantable quality in sale or supply of goods contracts);

109 (b). that the are reasonably fit for the purpose for which they are used (equivalent to fitness of purpose of purchase in sale or supply of goods contracts).

110 The above propositions are derived from **GH Meyers & Co v Brent Cross Service Co** [1934] 1 KB 46 and **Young & Marten Ltd v McManus Childs Ltd** [1969] 1 AC 454 (HL).

111 61.In the case of a hybrid contract, comprising sale of goods and rendering services, SOGA or SUGSA (Part I) will govern the sale or supply of

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goods component and the common law rule and SUGSA (Part II) will govern the labour and services part. See **Watson v Buckley, Osborne, Garrett & Co Ltd** [1940] 1 All ER 174.

112 62. ***Merchantability and fitness for purpose distinguished***

113

114 The statutory provisions as to merchantability and fitness for purpose govern distinct factual scenarios. Merchantability governs the sale of a particular thing which can be applied to a range of possible uses. Purchase of a general purpose ship would be such a sale as long as it can carry some cargo. The essence of s 14(2) is that if anything is sold by someone who is in the business of selling such goods, there is a warranty of good quality written into the contract. So if the thing sold does not measure up to such quality the seller is liable unless there is an effective exemption clause to relieve him from liability. Fitness for purpose governs the sale of a particular thing, whether ascertained or not, for a particular purpose, say a passenger ferry in the North Sea. It must be fitted with the necessary equipment to withstand the weather conditions there. The word `particular` in this context should be understood to mean `given`, `disclosed` or `ascertained`.

115 63.Under English law, SUGSA is not applicable to contracts for work and materials for the construction or repair and renovation of buildings. The reason is that the end product transferred in such contracts is not a chattel sold or agreed to be sold for an agreed price, but the construction of a fixture or a building. In such contracts materials like bricks, cement and water as such are not transferred as goods. They become part of the structure and therefore

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become land or fixtures and not goods. Additionally, the price in such cases would include labour and services which do not come within the ambit of sale or supply of goods.

116 64.Then there is the case of goods and services such as when a motor repairer supplies goods (scil. spare parts) and provides workmanship to properly fit them into a vehicle. Such a contract is a hybrid contract of sale of goods and services. In those cases the `strict liability` rule applies to goods and the `due diligence` rule applies to workmanship and service. See **GH Meyers v Brent Cross Service Co** [1934] 1 KB 46, **Watson v Buckley, Buckley Osborne, Garrett & Co Ltd** [1940] 1 All ER 174 and **Young & Marten Ltd v McManus Childs Ltd** [1969] 1 AC 454.

117 65. ***Consequences of implication of terms by law***

118

119 There are three significant consequences of the implication of terms by law as mentioned above, be it common law or legislation. The first is succinctly summarised in ***Breach of Contract*** by JW Carter (2nd Ed, 1991) at para 226:

> *Onus of proof*
>
> *Onus of proof. Where, in a particular contract, a term is normally implied in law, the onus is on the party alleging that the term should not be implied. Evidence of exclusion must be produced, for example by pointing to the special circumstances of the case or a term in the contract. Certainly this is the position where the contract is of a type to which a term has, in the past, been implied. For example, in a commercial sale of goods the onus will be on the seller to prove that no term of merchantable quality should be implied into the contract.*

120 66. **Consequence no 1: onus of proof**

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121 Further at para 229, the writer adds the following pertinent comment:

> *In view of the onus of proof, the terms referred to above will be implied unless the circumstances of the case indicate that it would be unreasonable or unjust to imply them. Alternatively, it must be established that implication will result in inconsistency with other terms in the contract. In the case of contracts for work and materials, where the implied term of fitness for purpose is distinct from the implied term as to quality, the exclusion of one of the terms does not of itself prevent the other being implied.*

122 67. **Consequence no 2: strict liability**

123 The next point of importance is that when a term as to quality and fitness is implied into a contract for sale or supply of goods or work and materials, it attracts the strict liability rule as regards goods and materials. As I have stated earlier, this means that contractors are liable even for latent defects in chattels. They are almost like insurers liable for defects in the goods, even though they could not detect them by reasonable care and skill; that they acted with reasonable competence is no defence. Take for illustration the case of **Wren v Holt** [1903] 1 KB 610. Beer was sold by the defendant publican. Nothing less than an analysis by an expert could have revealed that arsenic was dissolved in the beer. This did not prevent liability being incurred by the publican. The justification for this proposition was simply that he had not delivered what he undertook under his contract.

124 68. ***Young & Marten Ltd*** is another legal landmark which illustrates the above propositions of law. As I have stated above, sub-contractors agreed in writing to roof certain houses. The builders on behalf of owners specified tiles made by only one manufacturer. The sub-contractors duly obtained tiles from that manufacturer in the ordinary course of trade and installed them. Owing to faulty manufacture, the particular tiles used had an undetectable defect which

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made them liable to break in frosty weather. It was held by the Court of Appeal and the House of Lords that the fact that the builders (owners) had specified tiles made by only one manufacturer did not exclude the ordinary implied warranty of good quality on the part of the sub-contractors. The implied condition as to fitness extended to latent defects. As to workmanship it was accepted that it must be done with proper skill and care. The `purpose warranty` was not excluded because the supplier was chosen by the builders (owners). There was no express term in the contract nor was there any admissible surrounding circumstances showing that the parties intended to exclude the quality warranty.

125 69. ***Consequence no 3: time for determining merchantability and fitness for purpose***

126

127 Another point of importance is that the time for determining whether goods sold by description are of merchantable quality (particularly in cases where the vice is inherent) for the purposes of s 14(2) of the Sale of Goods Act is at the date of the trial. Lord Guest in **Henry Kendall & Sons v William Lillico & Sons Ltd** [1969] 2 AC 31 at p 108 stated the point in these words: `It is clear that the quality of the goods has to be assessed at the time of the trial when the latent defect has become known.` Lord Reid explained [at p 75] the principle as follows:

> *The novel feature of this case is that whereas in 1960 there appears to have been thought to be only one quality of this product, subject to minor variations, it has now been discovered that particular parcels though apparently of the usual quality may really be of a very different quality because they are contaminated by minute quantities of a powerful poison. So the*

> *question at once arises - do you judge merchantable quality in light of what was known at the time of the sale or in light of later knowledge?*
>
> *It is quite clear that some later knowledge must be brought in for otherwise it would never be possible to hold that goods were unmerchantable by reason of a latent defect. By definition a latent defect is something that could not have been discovered at the time by any examination which in light of then existing knowledge it was reasonable to make.*

128 70.Closely connected with the above principle is that goods which comply with the requirements of merchantability and fitness for purpose must, depending on the nature of the goods, also be capable of enduring for a reasonable period and they must be free from any propensity to deteriorate seriously or break down. Put another way, goods must not unduly suffer a breakdown during their normal life-span. See **Crowther v Shannon Motor Co** [1975] 1 All ER 139[1975] 1 WLR 30 (CA). The fact that the goods do not last the legitimate life-span or that they break down often is a clear symptom of their inappropriate quality. This common law rule goes hand in hand with common sense in determining merchantability and fitness for purpose.

129 71.The events narrated in this case occurred and the cause of action accrued before the advent of the Application of English Law Act (Cap 7A) on 12 November 1993. Accordingly the applicable law in this case is English commercial law imported via s 5 of the Civil Law Act (Cap 43) before it was repealed by the Application of English Law Act (Cap 7A).

130 72. ***The role of lightning***

131

132 Having outlined the relevant law I now turn to the effect of lightning on the system. To take in the technical content of the effect of lightning on the videophone system, it is necessary to refer to certain basic knowledge of the relevant laws of nature. The following scenario illustrates it well. From time out of mind the son of the soil who derives great delights from the land understands and acts on basic laws of nature. He knows that if there is insufficient water supply the growth of his crop will be stunted; they may even die for want of it. He further knows that too much water will ruin them. So by applying the art and science of irrigation he controls the flow of water to derive the delights of nature. For this purpose, he builds dams, digs channels and constructs sluices not only to ensure an adequate flow of water but also to drain away and divert excess supply of water. Further, he will never choose a low-lying area for his cultivation as it is bound to invite flooding. Nature abhors a vacuum. Finally, he takes particular care to cope with seasonable and unseasonable rains so that his fields are not deluged. Put another way, the farmer knows that he must never defy nature and to conquer nature one must obey her laws. The same principle applies to the use of electricity to operate the videophone system. To conquer electricity one obeys its laws. The defendants chose a very low voltage to operate the digital system. In the result, enormous as it was comprising 1,006 units, the field system was overloaded with electricity when the demand was great, and deluged when there was lightning. Flash-over voltage, in other words, will not be effectively and sufficiently diverted and screened off. This was admitted by Chubb. So Chubb ought to have fitted the system with surge arresters and co-axial cables. It would be preposterous to expect the plaintiffs, their predecessors and their consultants to detect those latent faults, and build in rectification measures. The defendants were independent contractors and not servants of the plaintiffs and their predecessors. They were not working under the direction and guidance of the developers and their technical consultants. The

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developers merely provided a description of the system and they called it `specification`. It was the contractual duty of the defendants to get up and install the system in accordance with the specification or description.

133 73. **Lightning arresters**

134 In laboratory conditions the system would be fine, like a toy electric train that works in the living room of a well protected house. But the videophone, particularly the field equipment, was going to be in close proximity to the magnetic field of the earth which would experience surges of electricity during thunderstorms, just like the sea which experiences wave surges during typhoons. Prudent men never defy nature. The farmer makes provision to dam and divert surges in water level. Similarly Chubb ought to have fitted the system with surge or lightning arresters to dam and divert the excess voltage that may enter the system during a thunderstorm. JL Marshall in **Lightning Protection** [1974] at p 178 explains very fully the concept in these succinct sentences:

> *Lighning arresters*
>
> *The lighting arrester is a `safety valve` used to limit overvoltages and to bypass the associated current surge to a ground system. The arrester is the triggering device, but the ground system absorbs most of the energy. The purpose of the arrester, or surge diverter, is to protect electrical equipment from being damaged by voltage surges and to minimize the interruption of electrical systems. Consequently they are normally installed adjacent to the transformer, reactor, or other component needing protection; the sparkover voltage rating of the arrester is selected in relation to the normal voltages of the system to which they are connected.*
>
> *The arrester has a dual role of protecting against abnormal overvoltages due to faults on the system and protecting against voltage surges due to lightning. Accordingly its threshold or sparkover voltage should be nearly constant for overvoltages at power frequency, switching transients at medium frequencies, and lightning surges that are steep-fronted or high-frequency impulses. Also the arrester should discharge at a relatively small margin of voltage above the normal maximum voltage of the*

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> *protected system, so that the insulation requirements of the transmission line and connected components can be kept to a minimum. It follows that the arrester should restore itself for a repeat operation when the overvoltage drops to near normal level; that is, it should have a low `reseal` voltage.*

135 74.Needless to say the lightning arresters to be incorporated in the system should be able to serve the special requirements of the system. So, if the system operates on a very low voltage, proper and adequate lightning arresters should be inducted into the system to dam and divert all excess voltage. When one is playing with low voltage, one must consider the availability of suitable lightning arresters to protect the system.

136 75. **Lightning arrester and lightning conductor distinguished**

137 At this juncture a cardinal distinction must be noted: A ***lightning*** or ***surge arrester*** must not be confused with a ***lightning conductor*** . As explained above a lightning arrester is a device to protect communication and other electrically operated apparatus from lightning or other voltage surges. Even the humble telephone is fitted with it. In effect it blocks surges. Accordingly, its selection and application depend on the parameters of the apparatus. Too low a voltage makes it difficult to secure and apply appropriate lightning arresters. As the defendants said, the fact that this was a customised system made it that much more difficult to arrest the surges. They were the authors of this predisposition. As they have admitted they should not have designed it at such a low voltage. It made it unfit for the purpose for which it was installed. A lightning conductor, on the other hand, is a metallic rod or wire fixed to the top or other exposed point of a building, or the mast of a ship, to divert lightning into the earth or sea. Its purpose is to protect the fabric of the building and people by attracting direct lightning strikes and channelling them into the earth or sea. It provides a

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secondary pathway for electricity from the sky to pass indirectly into the earth and thereby neutralises a charged cloud in the neighbourhood. Here one is handling super-high momentary voltages. It was a failure to appreciate this dichotomy between surge arresters and lightning conductor by the parties concerned which led to this protracted litigation.

138 76.It follows from the fit of things that the responsibility for the provision of lightning arresters rests with the designer, maker and installer of the apparatus. The responsibility for installing sufficient and efficient lightning conductors is assigned by contract and common sense to the developers or more accurately their M & E Consultants. It would be ridiculous and outrageous in the extreme to expect the M & E Consultants to stipulate that Chubb must use lightning arresters and what kind of lightning arresters they must use for they did not decide on the parameters of the videophone system. Nor were they aware of them.

139 77.There was yet another seed of trouble in the system. The digital cables used in the field were not co-axial cables. That is to say they had no tubular cover conductor which would serve as a screen preventing a flash-over or spark over of electricity from outside sources. The digital cables therefore invited interference from external sources whenever there was an ambient surge. Thus the system during sudden surges of electric charge suffered a `double-whammy`.

140 78. **Enlightenment on lightning (No 1)**

141 Having stated the basics I shall now examine the issues of the present case. What was wrong with this system has been alluded to by Williams and BL

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Tan as outlined earlier. The most educative and unimpeachable evidence on this aspect came from two witnesses called by the defendants. The first was Mr Eric Lim Meng Yee. He lacked the power to express himself in English but was profound in his observation. He was also open in his speech and adhered to the affirmation he made in court. What follows is a paraphrase of his evidence. For Eric Lim it was a matter of routine to receive calls from Mandarin Gardens whenever there was lightning in the vicinity. Invariably the system would suffer a dysfunction. This was manifested by all the videoscreens being switched on automatically at the same time. This meant that the system was flooded with electricity. In other words there was an overloading problem. There was evidence of this because he observed signs of burning in the circuit boards. As to the source of the overloading, his answer was: thunderstorms. His reason: Nothing happens without a cause and causes are proximate in terms of time and place. Since the dysfunction came at the back of thunderstorms and as thunderstorms cause a surge in electricity in the physical environment they visit, there must be a causal connection between them. He had a solution to the problem too. I shall let him speak (omitting unnecessary words): `Actually, my suggestion is to replace all the power supply at the video on the switching on the video site - the power supply. I am sorry, I cannot express. I want to make some changes on it. ... I made this suggestion because it`s a overloading problem. When, let us say, any of the lightning strike, the switching unit to the videophone, it may turn all at the same time. Well, sometimes, it turns on by itself - the picture is displayed but there is no power supply to activate the videophone. But if there is lightning strike, it may be caused to turn on all that particular - all that control at the same time. So I think it may be - I am not very sure how many units in one of the - on the zone. I am referring to the zone card ... It is a principle that if ... all the units turn on the same time when there is lightning it`s lost control. I think it`s from the burnt mark, from the burnt circuit

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board itself, ... there is a burn on the circuit board. ... I can`t find any reason that, the track, the circuit board track can be burnt. ... If there is a lightning, nobody will know what can be, it will occur on the circuit board may be because of the surge. It may strike into the SSU board and the control of course will of course go haywire. This applied to all 17 blocks. If it is not overloaded, the printed circuit board will not be burnt.`

142 79.Eric Lim joined Chubb in 1974 but he became involved with Mandarin Gardens only in mid-1989. One KS Lim, who had since left Chubb, was in charge before him. KS Lim had informed Eric Lim about the problems at Mandarin Gardens in the wake of thunderstorms.

143 80.All this evidence was not in Eric Lim`s affidavit of evidence-in-chief. He revealed it when he gave evidence before me. His suggestions never reached the management or if they did made no impression on them. In my view, the Chubb management was fully aware of them because when they complained to Chubb HK that the system had been poorly designed and it never worked properly from the outset it must have been on the basis of input from KS Lim and Eric Lim and probably others. KS Lim and Williams could have given important and relevant evidence but Chubb did not call them.

144 81. **Enlightenment on lightning (no 2)**

145 Then came the evidence of Professor Liew Ah Choy. He is a nonpareil in Singapore in so far as knowledge on lightning is concerned. He described himself as a `high-voltage man`. He was called by the defendants as an expert witness. His evidence before me was very illustrative in two respects.:

First:	There was nothing wrong with the lightning conductor system

	of Mandarin Gardens. The lightning tape conductor systems protect the fabric of the building, not the electronics within the building. They were adequate and complied with the rules and regulations for lightning protection for the building.
Second:	The defendants called in specialists to install surge arresters to alleviate the problem. But even they were in grave error.

146 What follows are excerpts (omitting unnecessary words) from Professor`s Liew`s evidence.

> *I think in 1991 Chubb engaged Sankosha. Sankosha is a specialist in surge protection, surge arrester protection. And Sankosha came in and they installed some surge arresters in the power line initially and that wasn`t sufficient to protect the system. They came in again and installed some surge arresters for the telecommunication lines, and the type of arresters they put in, were inappropriate. Surge arresters were considered, were applied, and to my surprise even the specialist in surge arresters, the people who supplied made mistakes. Surge arrester is not a very simple thing to apply. When you put in a surge arrester, you have to consider many things. You are putting in a device in between a line basically to try to arrest the surge, and in the process of doing so you have to make sure that the device is compatible with the system. My analysis of the error made by this Sankosha is that they selected the arrester which, number one, clamped the voltage too high; in other words, it wasn`t sufficient to clamp it low enough, as well as the other problem. And the other problem is, by inserting arrester in the line, they degraded the communication signal; they degraded it. In other words, the thing became worse. One of the actions taken by one of the technicians in Chubb was that he bypassed the arrester. He looped away the arrester, and that sounded terrible at that time. Of course he`s defeated the purpose. He did the right thing because the priority is actually the communication line. Because if you don`t do that, you lose communication. So the proper thing to do, if I were the man of the moment, for example,*

> *I would actually, you know, loop it out as well, but I have to make a lot of noise and say, `Oh, you know, because, beware, now you`ve no protection.`*

147 82.Then he gave the following clarifications of points raised by me:

Judge:	As I understand your explanation, if you`re talking about - I`m not talking about Chubb now.
Witness:	Yes.
Judge:	So if you`re talking about any equipment working, let us say, on 5V, and it can be damaged by a voltage, say, of about 20-.
Witness:	That is correct, your Honour.
Judge:	What the Sankosha people could not - the numbers are not correct, of course.
Witness:	Yes, yes.
Judge:	Is, maybe 20 or above -
Witness:	That`s correct, your Honour.
Judge:	And therefore -.
Witness:	It will still damage, yes.

148 83.Professor Liew added that there were ways to alleviate the problems but they were not applied. He got into the act after the fact that is only in connection with the litigation.

149 84.The end result was that Chubb made an abject mess of the whole thing in designing and installing the system and then tinkering with it hoping to rectify a hopeless situation. By trying to remedy the defects they made things worse. In short Chubb lacked `the little wit that makes mickle travel`.

150 85. ***The decision***

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152 I shall now evaluate the merits of the claim and the defence. For this purpose I would characterise the principal contract between the parties as a sale of goods contract. In the result obligations of strict liability would apply to it. Even if I am wrong in that, it makes no difference for the same rule applies to a contract for supply of goods or contract for work done and materials as regards the goods or materials supplied. In para 2 of the defence Chubb conceded that they agreed to `supply, install, test and commission a security and communication system`. This suggests that it was at least a contract for supply of goods. At all events it was not a contract for work and materials. The essence of the contract was such that the equipment was not intended to become a fixture. This videophone system was not intended to become a fixture. The maintenance agreement was, of course, a contract for services even though, as an incident to their service obligations, Chubb were required to supply spare parts. This characterisation of the supply contract attracts all the three consequences I have referred to earlier.

153 86.The plaintiffs argued that Chubb was in breach of contract under the following heads: 1. breach of express terms of contract;

154 2. breach of implied term of merchantability, that is good and usable condition without undue glitches and breakdowns;

155 3. breach of implied term of fitness for purpose.

156 4. breach of obligations under the maintenance agreements.

157 87.I hold without hesitation that the plaintiffs sustained their case under all four heads. In coming to that conclusion I have applied the strict liability rule to the first three heads and the due diligence standard to the fourth head. Even

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if the strict liability rule did not apply my conclusion would be no different. By the application of either rule I hold that Chubb were in breach their contractual obligations to supply a safe and efficient system. They were aware of the deficiencies in the system but they chose to close their eyes when they discovered the problems. I shall now elaborate on my decision.

158 88.In the present case there is a blatant admission from the horse`s mouth that the system was dysfunctional from the date of installation. The use of 5V was a major cause of the dysfunction. The operation was unstable. The very fact that the defendants `very strongly recommended` that the system should be replaced with `COMELIT` Digital Calling System was clear proof of unfitness and deficiency of their system. The merits of the COMELIT described in the report by comparison demonstrate the demerits of the Chubb system. In consequence the videophone system supplied by the defendants squarely failed to meet the requirements of the fitness for purpose warranty. Once that happened the strict liability rule applied to make the defendants liable.

159 89.In this case there was only one purpose and that purpose was meticulously made clear. It was meant for two-way communication with the person at the apartment seeing the image of the person at the entrance. The implication was that it must function without undue disruption and it must serve all the apartments and the office. The purpose was clearly made known whichever way one may characterize the contract for the supply and instalment of the system. The system failed miserably. The reason why it failed is irrelevant to the liability of the defendant but it gives the reassurance that the plaintiffs and the developers were not the authors of it.

160 90. ***Chubb`s defences***

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162 I shall now consider the defences of Chubb. First it was contended that their only obligation was to supply install, test and commission the videophone system in accordance with the technical specifications specified by UPC. In my opinion, this is a blinkered view which failed to take in the total picture. It ignored the very important implied terms which the common law and the statutory provisions have imposed on them. The only defence the defendants could possibly raise was to show that the implied terms did not apply because they had contracted themselves out of the implied terms. That was not the case here. The implications of good quality and fitness for purpose are fortified by the fact that the plaintiffs stipulated that the system should function under all conditions of service. The plaintiff did not give any specifications as to what components the defendants should include, what components they could leave out and what should be the strength and capacity of the components Chubb or their subcontractors may choose to include. The specifications given by the plaintiff amounted to a broad description of how the system should function. It is nothing more than a statement of the purpose for which the system was required. This was, in a way, confirmed by Mr Leung of Chubb HK who said in evidence that there was no input from the plaintiff as to the design of the system. It was their own 5V. Williams understood this when he said that `they asked for a far too sophisticated a system and were allowed to have it, which was a mistake`. If Chubb, as it later became clear, were unable to provide the system the developers had asked for, they should have infused suitable exemption clauses if the latter would have accepted them. That never happened.

163 91.The specifications which the developers stipulated were nothing more than a detailed description of the functional requirements. How to

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materialise those requirements was the unqualified responsibility of the defendants.

164 92.Next, the defendants made the point that there was no requirement for the defendants `to design or provide lightning protection or a lightning protection system to protect the videophone security system`. This is another mistaken view of the real situation because what we are concerned with here is not lightning protection for the fabric of the building structure but surge arresters and coaxial cables which should have been an integral part of the system. It would be preposterous to even suggest that the developers and their consultants must stipulate such things in a system they contracted for with the defendants. The defendants and their counterpart (Chubb HK) were designing the system including the digital part. They were responsible for the fabrication of the digital system. Indeed it was stipulated in the contract that the defendants should provide their drawings to the plaintiffs. Be it remembered that Chubb HK was chosen not by the plaintiffs but the defendants.

165 93.Be it also remembered that when things went wrong, the defendants at no time vociferated against the plaintiffs. They assumed responsibility to put the system right. They blamed Chubb HK not only on their own behalf but on behalf of the plaintiffs as well. The defendants` contentions vis-a-vis the plaintiffs are unfounded. They were devised for the purpose of the litigation with the view to defeat the patently clear case against them. This came out clearly from the fact that when the defect was discovered by their own men the management chose to look in the other direction. Eric Lim suggested a very good solution; but it fell on deaf ears. The only explanation I can think of for their lackadaisical attitude and behaviour was that they wanted to keep the

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money, the more than one million dollars they received, on the right column of their balance sheet.

166 94.Moreover, the defendants say they were not under an obligation to make the system merchantable or fit for the purpose for which it was required. In other words the plaintiffs took it on an `as-is-where-is` basis. This is another way raising the old doctrine of caveat emptor in sale or supply of goods. In **Barr v Gibson** [1838] 150 ER 1196 a ship was sold while on voyage. She then stranded, though she was not a total wreck. Parke B said at page 1200 `In the bargain and sale of an existing chattel, by which the property passes, the law does not, in the absence of fraud, imply any warranty of the good quality or condition of the chattel so sold`. In the 150 years since Baron Parke spoke those words, the legal barometer has changed both in respect of used as well as new custom-built goods. See **Crowther v Shannon Motor Co** [1975] 2 All ER 972[1975] 1 WLR 30 (CA) a case on the sale of a used car. Today the policy of the law is very much in favour of the consumer. Both the common law and legislation have changed so much so that the doctrine of caveat emptor has virtually evanesced from the scene of sale and supply of goods. Today in sale of goods and other cognate contracts the applicable principle is `seller beware` (caveat venditor). Where the seller is averse to the implied warranties he should, when allowed by law, contract out of them. In this case the defendants had not contracted out of them. The implied terms under statute and common law, therefore, applied with full force and effect against the defendants.

167 95.Then they complained that the plaintiffs did not give notice of the defects during the defects liability period. This is a disingenuous standpoint. It is settled law that it is unnecessary to give notice of something to someone who is aware of the thing. The law never compels a person to do that which is useless

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and unnecessary. See **Barrett Bros (Taxis) Ltd v Davies** [1966] 1 WLR 1334 at 1340. Furthermore, these were latent defects in the system which were known to the defendants at the time or at least soon after the installation. The plaintiffs came to know that fact from the defendants. In any event, if the defendants intended to exempt themselves from liability for latent defects there must be clear and apt provisions in the contract. There were no such provisions in this contract. Finally, as I pointed out earlier as regards non-merchantable quality and unfitness, the appropriate time to determine them, especially when there is a latent defect, is at the time of the trial.

168 96.It is true that the plaintiffs chose certain special features which they stipulated. But the defendants by contract and for a good price undertook to provide them. by not expressly excluding the implied terms they undertook to abide by them. That obligation was a strict obligation. Accordingly they have no justification to gripe about the plaintiffs` requirements after receiving payment of the full price and the maintenance fees.

169 97.Then the defendants said that in March 1987 they went to look at the system when it began to malfunction out of goodwill, from the good of the heart. They raised the point for the first time in the litigation. They did not say so at the time they attended to them. They were under a legal obligation to install a proper system and put it right. They were fully aware of it. In fact Chubb assumed that obligation. Remember the undertaking the defendants gave by the hand of Williams: `You will recall that when these problems were identified, we gave you the undertaking that we would not walk away from this problem and that we would put it right`. Furthermore, it was an implied duty of the defendants as providers of maintenance service to detect the defects and inform the plaintiffs. They were retained for that purpose.

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170 98.The defendants` case was postulated to depend on a plethora of principles applicable to construction contracts. They cited many building contract cases. They belong to one regime. contracts of sale or supply of goods belong to a different regime.

171 99.The lightning conductor of the building became the focal issue of this case. Both witnesses and counsel spent days theorising on the lightning issue. In the end counsel for the defendants submitted and convinced me that it was a red herring. But it was a red herring introduced into the case by the plaintiffs themselves. They did so by saying that lightning was the cause of all the trouble and that the defendants did not provide adequate lightning protection. The defendants joined issue and made it their mantra. They built their defences around it. The CATV system at one point became the unnecessary focal point of the case. In the result too much time and effort was expended on it. Lightning protection by the use of a lightning conductor was confused with surge protection by lightning (surge)-arresters. In the end it turned out that there was adequate lightning protection but no surge-protection. In any event, even this became a non-issue because of the strict liability rule.

172 100.I therefore conclude that the defendants by the terms of the contract, by common law and by statute were under an obligation to design, fabricate and install an all-weather videophone system. Names are debts. So the name `Chubb` laid on them an obligation to produce a safe and efficient system that would provide `total security` and dependability. But they failed miserably. They owed it to their own reputation, in any event. So by the law of this land they must pay damages for their breach.

173 101. ***Damages issue***

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175 One factual aspect of this case that gave me a certain qualm was a point on which the defendants pinned their hopes on. That was the fact that when they `handed over` the system on 30 September 1986 and for some time after that the system was up and running. This qualm was in respect of liability as well as damages.

176 102.As to liability I realised soon that my doubt was a misjudgment as it was a misconception on the part of the defendant. The fact that a thing sold or supplied is apparently free of defects and functional flaws does not exonerate the seller or supplier if the defect or determinant of dysfunction was latent at the time of delivery, supply or installation. This is especially so when the seller or supplier is better placed to detect the defect. All the more so when the seller or supplier having control over the thing inveigles the buyer into inaction.

177 103.`If a buyer received from his seller an article which was patently not the article contracted for, he could not use it at the risk of the seller` said Rowlatt J in **British Oil and Cake Co Ltd v Burstall & Co** [1923] 39 TLR 406, 407. It follows, therefore, that whether the article is ***latently*** not the article contracted for, the buyer uses it at the risk of the seller. Moreover, it would be an obligation of the buyer to put it to reasonable use if a substitute is not readily available. Such a course of action is justified on the basis of his duty to act reasonably in seeking damages. Additionally, the buyer has a valid claim if the defect manifests within the expected period of durability. In making this proposition I derive confidence from ***Young & Marten Ltd*** and ***Crowther v Shannon Motor Co*** and other cases of this kind. In ***Young & Marten Ltd*** the tiles were safe and sound at the time of supply but crumbled under the adverse

weather of the winter. In the ***Crowther*** case, the used motor car was up and running for three weeks before it broke down. Those facts did not prevent the recovery of damage.

178 104.As to damages, s 53 of the SOGA propounds in a general tenor as follows: 1. Where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty the buyer may maintain an action against the seller for damages for breach of warranty.

179 2. The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events, from the breach of warranty.

180 3. In case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty.

181 In order to ascertain the complete set of rules the following propositions should be added to the above general propositions.

182 105. ***Jacob & Youngs v Kent Ruxley Electronics v Forsyth*** The propositions stated above apply equally to contracts for supply of goods as well as contracts for work and materials. In such cases, in addition to the prima facie rule, the following principles should be kept in the forefront of the mind: (i). `Damages for breach of contract must reflect, as accurately as the circumstances allow, the loss which the claimant has sustained because he did not get what he bargained for. There is no question of punishing the contract breaker. Given this basic principle, the court, in ascertaining the measure of the claimant`s loss has ultimately to determine a question of fact, although the law has of course

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developed detailed criteria which are to be applied in assessing the appropriate measure of loss in a wide variety of commonly occurring situations. ... Common sense and common law here go hand in hand.` See **Ruxley Electronics & Construction Ltd v Forsyth** [1996] AC 344 at 353 and 354 (per Lord Bridge).

183 (ii). As a general proposition the innocent party would be entitled to the cost of reinstatement to workable condition or to substitute it with a new article which will meet the description and specification as to purpose. But there is a very important qualification to this rule. It was stated by Cardozo J in 129 NE 889 at p 891: `It is true that in most cases the cost of replacement is the measure. ... The owner is entitled to the money which will permit him to complete, unless the cost of completion is grossly and unfairly out of proportion to the good to be attained. When that is true, the measure is the difference in value. Specifications call, let us say, for a foundation built of granite quarried in Vermont. On the completion of the building, the owner learns that through the blunder of a sub-contractor part of the foundation has been built of granite of the same quality quarried in New Hampshire. The measure of allowance is not the cost of reconstruction. `There may be omissions of that which could not afterwards be supplied exactly as called for by the contract without taking down the building to its foundations, and at the same time the omission may not affect the value of the building for use or otherwise, except so slightly as to be hardly appreciable.`

184 . In other words `Damages are designed to compensate for an established loss and not to provide a gratuitous benefit to the aggrieved party from which it follows that the reasonableness of an award of damages is to be linked directly to the loss sustained. If it is unreasonable in a particular case to award the cost of reinstatement it must be because the loss sustained does not extend to the

need to reinstate. A failure to achieve the precise contractual objective does not necessarily result in the loss which is occasioned by a total failure.` See at p 357 (per Lord Jauncey).

185 106.Having considered above principles and criteria and by applying common sense I decided that the appropriate basis that commended itself to me was the amount of money required to place the plaintiffs in the same position as they would have been in if the contract had been performed according to description and specifications of the purpose the system was required for. This was the basis of estimation of damages in ***Young & Martens Ltd*** . That is to say the cost of completely retiling the roofs. This was also the basis relied on by the Court of Appeal in ***Ruxley Electronics*** . In that case the innocent party retained and enjoyed the use of the swimming pool. There was no reinstatement of the pool to the contractual description and specification. The breach in any event was so minimal that reinstatement would have been massively unreasonable. So the House of Lords, applying the principles stated earlier, decided that reinstatement cost could not have been the appropriate basis. This case is very different. The plaintiffs were left without a working system. As in ***Young & martens Ltd*** , the periods during which the system was trouble-free constituted a relatively short time. Accordingly the qualification of ***Ruxley Electronics*** does not apply to this case.

186 107.Having said that I must add that the estimated cost of replacement given at the trial was $1,624,500. This was some ten years after the breach. It would be unreasonable to award this amount because it was not clear that the plaintiffs would spend that amount and embark on such a replacement project.

187 108. ***Award***

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189 However, the plaintiffs have claimed the price they paid which in all circumstances is eminently reasonable. I therefore award $1,024,769.70 in Suit No 1448 of 1992. I further award costs to the plaintiffs to be agreed or taxed and interest at 6% pa from 1 November 1991. That was when Chubb gave up. Finally, there will be no order in respect of Suit No 1449 of 1992.

G P Selvam J

Richard Tan and Shalita Jayakumar (Lee & Lee) for the plaintiffs
Indranee Rajah and Christopher Chuah (Drew & Napier) for the defendants

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