

Natferrous Pte Ltd v Tradelink Hardware Pte Ltd
[2005] SGHC 131

Case Number : Suit 389/2004

Decision Date : 25 July 2005

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Richard Kuek and Claire Nazar (Gurbani and Co) for the plaintiff; Zaheer Merchant, Brian Tan and Sophine Chin (Madhavan Partnership) for the defendant

Parties : Natferrous Pte Ltd — Tradelink Hardware Pte Ltd

Contract – Implied terms – Plaintiff claiming goods not conforming to description – Whether there was a sale by sample – Whether there was a sale by description

25 July 2005

Tan Lee Meng J:

1 The plaintiff, Natferrous Pte Ltd ("NAT"), who ordered 400mt of stainless steel scrap from the defendant, Tradelink Hardware Pte Ltd ("THP"), alleged that it suffered a loss as a result of the latter's failure to supply the agreed quality of stainless steel scrap. THP denied having supplied goods of an inferior quality and made a counterclaim for damages with respect to NAT's alleged failure to accept all the stainless steel scrap that had been ordered.

Background

2 NAT, a wholly-owned subsidiary of Natsteel Ltd, buys and sells non-ferrous metal waste and scrap. It obtains its scrap primarily in Singapore and exports the scrap to smelting plants in Japan, Korea, China, India and Malaysia. THP, a scrap dealer, buys and sells various types of metal scrap, including stainless steel scrap.

3 As NAT was interested in buying stainless steel scrap from THP, its senior manager, Mr Wong Teen Long ("Wong"), and manager, Mr Ang Cheng San ("Ang"), visited THP's scrap yard. They had discussions with THP's director, Mr Frederic Chew ("Chew"), who showed them a quantity of baled stainless steel scrap that had already been sold to other buyers. Ang claimed that he told Chew at THP's yard that NAT was only interested in buying the 300 series of stainless steel scrap and not the 200 series, an inferior and cheaper grade of stainless steel scrap. The difference between the two grades lies primarily in the amount of nickel in the steel. As the two types of stainless steel scrap look alike, there is a risk that the 200 series may be passed off as the 300 series. Both Wong and Ang testified that Chew assured them that only the 300 series of stainless steel scrap would be supplied to NAT. On the other hand, Chew denied having had any discussion with Wong and Ang with respect to the grade of stainless steel scrap to be supplied to NAT.

4 In the latter part of January 2004 and in February 2004, Chew telephoned Ang on a number of occasions when he had new stocks of stainless steel scrap to sell. Ang said that he ordered by phone and Short Message Service ("SMS") large quantities of stainless steel scrap from THP. The total quantity ordered by NAT under these contracts was disputed. NAT claimed that it ordered 400mt at a total cost of \$876,329.05 whereas THP contended that NAT purchased 680mt of stainless steel scrap.

5 Between January and March 2004, THP delivered to NAT 389.341mt of stainless steel scrap. NAT shipped the bulk of the goods supplied by THP to its foreign buyers, who processed the stainless steel scrap and discovered that the 200 series and not the 300 series had been shipped to them. NAT settled its buyers' claims for compensation.

6 NAT informed THP about its buyers' complaints and refused to take delivery of the remaining non-conforming goods. Chew promised to look into the matter. He said that he had contacted his supplier, Tsing Yi Enterprises Pte Ltd ("Tsing Yi"), and was awaiting an explanation from the latter.

7 On 22 March 2004, NAT arranged for six samples of stainless steel scrap that it had bought from THP to be tested by a Nitron-Alloy analyser. Chew was present during the test. The test results confirmed that all six samples were of the 200 series and not the 300 series of stainless steel scrap. These conclusions were not challenged by Chew, who took copious notes of the test results and asked for some of the samples to be handed over to him.

8 After having been repeatedly reminded to rectify the position, Chew denied, in an e-mail to Wong on 29 March 2004, that he was liable for supplying NAT stainless steel scrap which was of an inferior quality when compared to the 300 series. He stated as follows:

1. The material that was offered and sold to you, was confirmed based on your inspection in our yard with the price agreed by both parties.
2. We then delivered the said material to your yard, you have inspected the goods, accepted and make the payment, the deal is closed.
3. If you have any doubts, you should seek advice from your professional before your commitment.
4. We are doing proper business, any deals concluded will be at our best of knowledge.

9 After further correspondence between the parties failed to resolve the dispute, NAT instituted the present proceedings against THP.

NAT's case

10 NAT's case is that it was a term of its contracts with THP that only the 300 series of stainless steel scrap would be supplied. NAT claimed that Wong and Ang had made it clear to Chew when they visited THP's yard that they wanted to buy the 300 series and Chew had assured them that his stainless steel scrap would be of the 300 series. It also alleged that Chew repeated his assurances each time a contract was made. NAT also asserted that even if nothing else was said, the term "stainless steel scrap", as used in the trade in Singapore, referred to the 300 series. As such, by supplying the 200 series of stainless steel scrap, THP supplied NAT with non-conforming goods.

THP's case

11 THP denied that Chew had represented to NAT that he would be supplying the 300 series under their contracts for the sale and purchase of stainless steel scrap. THP contended that NAT had no right to complain about the quality of the stainless steel scrap supplied because there was no agreement regarding the quality of the goods. It asserted that the sale of stainless steel

scrap to NAT was by sample or on an "as is where is" basis. THP also asserted that Chew was a "karung guni" man who bought and sold stainless steel scrap without bothering about the grade of the steel.

NAT's expert witness

12 NAT called an expert witness, Mr Vinod Kumar Ramgopal Didwania ("Vinod"), the managing director of Donald McArthy Trading Pte Ltd, to assist the court. However, he was of little assistance. At the outset, THP's counsel, Mr Zaheer Merchant, submitted that he was not a suitable expert witness because of his relationship with NAT and THP and with the goods that are the subject of the dispute before the court. Vinod's company had traded with both NAT and Chew and he readily admitted that he was unhappy about Chew's alleged mixing of good materials with bad ones. Furthermore, Vinod's company had tried unsuccessfully on 19 April 2004 to purchase from NAT at a low price some of the stainless steel scrap that had been supplied by THP to NAT after Vinod's company knew of the dispute between NAT and THP.

13 Whether or not Vinod was a biased witness, he shed no light on two issues with respect to which his evidence could have been useful. The first was whether or not it is the practice in Singapore that a contract for stainless steel scrap which does not refer to the quality of the scrap to be supplied is understood to be a contract for the 300 series of stainless steel scrap and the second was the price difference between the two types of stainless steel scrap. While Vinod gave his opinion on these issues, he did not support his opinion with any credible explanation. In *Sim Ah Song v Rex* [1951] MLJ 150 at 151, Brown Ag CJ pointed out as follows:

[An expert] is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court.

14 Vinod also undermined his credibility by his inconsistent evidence and when he made substantial corrections to his first affidavit of evidence-in-chief ("AEIC") that was filed on 22 February 2005. Anxious to find written evidence that these goods in question were of the 300 series, Vinod stated in his first AEIC that "SS001", a code used in Tsing Yi's invoices to THP, was generally understood in the trade as a reference to "the dominant grade of metal alloy which in the case of steel scrap, is the 300 series". However, when questioned, NAT's and THP's witnesses said that they never heard of "SS001" stainless steel scrap. Vinod corrected himself by conceding that the code "SS001" in Tsing Yi's invoices had nothing to do with accepted practices in the stainless steel scrap market.

15 Another example of Vinod's unsatisfactory testimony concerns the difference in price between the 200 series and 300 series of stainless steel scrap. In his first AEIC, he stated in para 19 as follows:

For the prices of 300 series scrap on a CIF East Asian port basis for the year, please refer to Annex C of this report. The prices for 200 series scrap on the same basis for the year 2004 would be roughly 60%. The prices in Singapore were lower by about US\$500 to US\$600 per metric tonne if we exclude the freight/shipping and profit components.

16 Subsequently, Vinod amended para 19 of his first AEIC by replacing it with the following paragraph:

For the prices of 300 series scrap for the year 2004, please refer to Annex C of this report. The prices for 200 series scrap on the same basis for the year 2004 would be roughly about 50% to 60%. The 200 series scraps were lower by about 50% to 60% as compared to the price of 300 series scraps.

17 When cross-examined as to why his evidence on the price of the 200 series of stainless steel scrap was altered, Vinod blamed his lawyer for not accurately presenting in his first AEIC what he had intended to say. THP's counsel submitted that Vinod altered his position because what the latter had asserted earlier on could not be substantiated at the trial.

18 In the light of the aforesaid, the discussion below on my findings will include no reference to Vinod's evidence.

My findings on NAT's claim

19 As there were no documents that recorded the contracts between NAT and THP, much depended on whether the testimony of NAT's witnesses or THP's only witness is to be believed. In truth, the evidence of both NAT's and THP's witnesses left much to be desired.

20 During the trial, NAT unfolded a case which included matters that had not been pleaded in its Statement of Claim. For instance, NAT's assertion, that Chew had made representations and had given periodic undertakings to NAT that the stainless steel scrap was of the 300 series, had not been pleaded. Secondly, having alleged in the Statement of Claim that the contracts were orally made, NAT alleged at the trial that the contracts were also made by SMS. To make matters worse, NAT's manager, Wong, did not even know the exact dates on which the contracts were made. In the police report that he made for the purpose of supporting NAT's application for an order that SingTel and Starhub disclose data on his SMS messages to Chew, Ang stated that the contract was made on 16 January 2004. When cross-examined, he conceded that this date was incorrect and that he had not given the matter much thought when he lodged the police report. He also referred to a number of other SMS messages sent around that time to Chew. Regrettably, the data furnished by SingTel and Starhub showed that no SMS messages had been sent by Ang to Chew on all the days specified by him. This of course severely dented Ang's credibility, a point which THP's counsel did not fail to note.

21 Notwithstanding the shortcomings of NAT's witnesses, NAT's case was still more credible than that of THP. To begin with, the sale of the stainless steel scrap to NAT could not, as THP claimed, have been a sale by sample or a sale on an "as is where is" basis. As far as a sale by sample is concerned, s 15 of the Sale of Goods Act (Cap 393, 1999 Rev Ed) provides that a contract of sale is by sample where there is an express or implied term to that effect. Chew asserted that Ang saw a "sample" of stainless steel scrap at his yard but this does not by itself result in a sale by sample. In *James Drummond & Sons v E H Van Ingen & Co* (1887) 12 App Cas 284 at 297, Lord Macnaghten explained:

[T]he office of a sample is to present to the eye the real meaning and intention of the parties with regard to the subject matter of the contract which, owing to the imperfection of language, it may be difficult or impossible to express in words. The sample speaks for itself.

22 In the present case, the "sample" did not "speak for itself". The 200 series and the 300 series of stainless steel scrap look alike and there is no way of knowing what grade a sample of stainless steel scrap is without conducting scientific tests. Besides, as Chew testified that he always bought and sold stainless steel scrap without bothering about its grade, the question of a sale by sample does not arise. When questioned, he stated his position as follows:

Q. You know the difference between the 200 series and 300 series?

A. Yes ...

Q. How would you know what series you are buying?

A. I do not care about the series.

Q. How can you buy on the basis of market price when you do not know what series you are buying?

A. I buy it as stainless steel. If I have a willing buyer and a willing seller, I will trade.

23 THP's assertion that the sale of stainless steel scrap to NAT was on an "as is where is" basis was also untenable. *Benjamin's Sale of Goods* (Sweet & Maxwell, 6th Ed, 2002) states at para 11-011 that "sales other than by description are comparatively rare. ... [I]t follows that the only sales not by description are sales of specific goods *as such*" [emphasis in original]. Furthermore, Mr Low Leong Guan, the sole proprietor of Mettaloy Trading Company, who has for more than 20 years been in the business of trading in scrap metal, including stainless steel scrap, said as follows in para 12 of his AEIC:

Sales of stainless steel scrap between traders are on a description basis. I am not aware of any sale of scrap between traders on a "as is where is" basis.

24 After having had the opportunity to listen to and assess the testimony of witnesses from both sides, I find that NAT's staff had made it clear to Chew that NAT was only interested in buying the 300 series from him. Chew must have known that hardly anyone trades in the 200 series in Singapore. He admitted that after NAT rejected a part of the stainless steel scrap of the 200 series, he could not find a buyer for the rejected goods. He complained that after NAT had "told everyone that the cargo of stainless steel was contaminated", a term that describes the 200 series, no one would buy the contaminated goods from him. Apart from this, Chew must have known that NAT was purchasing the 300 series from him if only because the price offered by NAT for the goods was too high for the inferior 200 series. Atiyah in *The Sale of Goods* (Pearson Education, 10th Ed, 2001) at p 182, pointed out that the "price at which goods are sold is often relevant in deciding what quality the buyer is entitled to expect". Section 14(2A) of the Sale of Goods Act provides that when considering whether goods of satisfactory quality have been supplied by the seller, account may be taken of "any description of the goods, the price (if relevant) and all the other relevant circumstances" [emphasis added].

25 As far as the price difference between the 200 series and the 300 series of stainless steel scrap is concerned, Chew's evidence was so astonishing that it severely undermined his credibility. When cross-examined, his initial position was stated as follows:

Q. [Your own witness, Mr Jeffrey Yeo] said in his affidavit of evidence in chief that the 300 series is more expensive than 200 series. Do you agree?

A. I disagree.

26 Subsequently, Chew claimed that he did not know whether there was a price difference between the two grades of stainless steel scrap. When cross-examined, he said as follows:

Q. Are you saying that in all your 11 years of experience, you think that the market price of 200 series is the same as that for the 300 series?

A. I trade in stainless steel regardless of price ...

Q. Please answer the question.

A. *I do not know the answer.*

[emphasis added]

27 Finally, Chew changed his position altogether and contradicted himself when he said as follows during cross-examination:

Q. Can the 200 series be sold as the 300 series?

A. There is a price difference but by how much, I am not sure.

Q. [Your witness Jeffrey Yeo] says that the 200 series is cheaper.

A. I agree.

28 Chew's attempt to deny liability to NAT on the basis that he bought and sold stainless steel scrap without taking into account the quality of the goods further undermined THP's case. Chew has been in the scrap metal trade for 11 years and he knew more about the stainless steel scrap trade than he cared to admit. He called himself a "*karung guni*" man but this was hardly the case. His contracts with NAT in January and February 2004 were worth more than \$800,000 and his contracts with his supplier, Tsing Yi, were worth much more than \$1m during that period. Tsing Yi was not his only trading partner as he regularly imported goods from Brunei. He operated a US dollar account for his trade and he consulted the London Metal Exchange prices for his business. When referred to his company's accounts during cross-examination, he said that on one occasion, he withdrew "petty cash" of more than \$170,000 from his company's account. In the light of the aforesaid, I do not accept that Chew is a "*karung guni* man" who is not interested in the quality of stainless steel scrap that he buys and sells.

29 The course of action taken by Chew after discovering from NAT that his goods were non-conforming also undermined THP's case. If THP had really sold goods to NAT on an "as is where is basis", there would have been no reason for him to go to so much trouble to try to get to the bottom of things. When he was told that he had supplied the wrong series of stainless steel to NAT, he sent the following SMS to Ang:

I have sent a message to the agent. Still no news yet.

30 Chew's replies to questions during cross-examination on his message to his agent, Tsing Yi, were rather revealing. They were as follows:

Q. You told Ang that you had just sent a message to your supplier, Tsing Yi, and there was still no news. Why was it necessary for you to send Tsing Yi this

message?

A. To tell my supplier that in future, I cannot buy this scrap. Mr Ang cannot buy and he *wants me to settle the problem*.

[emphasis added]

31 What Chew meant by "settling the problem" was not explained. Neither could he explain clearly what he told Tsing Yi. When cross-examined, he said:

Q. What did you tell Tsing Yi?

A. Material supplied got problem.

Q. Is that what you told Tsing Yi?

A. I told him I cannot take delivery of the balance anymore.

Q. You told Tsing Yi what was the problem?

A. I told them there was a quality problem.

32 A "quality" problem in the context of stainless steel scrap can only mean that a different grade of stainless steel scrap had been supplied. If Chew bought and sold stainless steel scrap without bothering about its grade, he had no grounds to complain to his supplier, Tsing Yi, about the quality of the goods in question because the latter could have told him that he had purchased stainless steel scrap without any indication of its grade.

33 Chew's participation on 22 March 2004 in the testing process of the stainless steel scrap that had not been despatched by NAT to its foreign buyers is also rather telling. He said that he was present during the testing because of goodwill and that he took detailed notes as well as samples for his own information. This cannot be true. In any case, it is clear that his failure to insist at that time that he had sold goods by sample to NAT or on an "as is where is" basis cannot but be most unhelpful to his defence.

34 To sum up, as I find that the contracts between NAT and THP were for the 300 series of stainless steel scrap, the goods supplied must correspond with this description. By supplying to NAT the 200 series of stainless steel scrap instead of the 300 series, THP breached its contracts. In its counsel's closing submissions, NAT limited its claim for damages to the difference in price between the 200 series and 300 series of stainless steel scrap with respect to the 389.341mt delivered by THP. NAT, relying on the evidence of its expert witness, Vinod, initially claimed that the difference in price was 50% and that it was entitled to \$438,164.53. However, the parties have since agreed that for the purpose of this suit, the price of the 200 series is to be taken as 25% less than that of the 300 series. NAT is thus entitled to damages amounting to \$219,032.26 for THP's breach of contract. NAT is also entitled to interest on this sum at the rate of 6% as from the date of the writ until the date of judgment.

The counterclaim

35 As I have found that THP's contract with NAT was for the 300 series of stainless steel scrap, the former's counterclaim with respect to NAT's alleged failure to take delivery of an additional quantity of 200 series of stainless steel scrap need not be considered. In any case, no concrete

evidence that NAT had ordered the additional quantity of steel was furnished. The counterclaim is thus dismissed.

Costs

36 As NAT is only entitled to damages amounting to \$219,032.26, it is awarded costs on the Subordinate Courts scale.

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