En Frozen Pte Ltd *v* Singmah Steel Refrigeration Pte Ltd
[2014] SGHC 21

Case Number : Suit No 1011 of 2012

Decision Date : 29 January 2014

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Subbiah Pillai (Cosmas LLP) for the plaintiff; Lim Kian Wee Leonard (Lim Kian Wee Leonard) for the defendant.

Parties : En Frozen Pte Ltd — Singmah Steel Refrigeration Pte Ltd

Contract – Breach

Contract – Misrepresentation

29 January 2014 Judgment reserved.

Andrew Ang J:

1 This is an action brought by the plaintiff ("En Frozen") against the defendant ("Singmah") seeking various reliefs for alleged breach of contract, including breach of implied terms under the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("SOGA"), and misrepresentation.

2 En Frozen is a retailer of frozen and chilled food. Singmah is a wholesaler and retailer of commercial kitchen equipment and commercial refrigerators. It was engaged by En Frozen in respect of the purchase and installation of the chiller and freezers at En Frozen's shop unit at Block 1 Geylang Serai #01-198 ("the Shop"), which was intended to be fitted out as a "mini-supermarket".

3 Singmah had agreed to supply:

(a) one Fukushima-brand chiller, two 8ft showcase freezers and two 6ft showcase freezers (collectively, "the First Order") under Order Form 08802 dated 20 April 2011 ("the First Order Form") for a sum of $127,116; and

(b) two Fukushima-brand self-contained "island" freezers (collectively, "the Second Order") under Order Form 08977 dated 1 June 2011 ("the Second Order Form") for a sum of $16,500.

4 For convenience, I shall refer to the chiller and various freezers collectively as "refrigerators".

5 Singmah has a counterclaim against En Frozen for $63,558, being the balance of 50% outstanding under the First Order and interest thereon.

6 En Frozen's claim for the refund of moneys paid under the Second Order is doomed to fail, as it is *res judicata*. The Second Order was the subject of Magistrate's Court Suit No 23819 of 2011. In that case, Singmah sued En Frozen for $8,500 (being the unpaid balance of the price of goods sold and delivered yet unpaid) and interest. [note: 1] Summary judgment was entered against En Frozen on 29 March 2012. En Frozen did not appeal and the judgment has been satisfied by En Frozen. [note: 2]

Background

7 En Frozen's and Singmah's versions of the events surrounding the sale and installation of the refrigerators differ significantly in almost all crucial aspects. Indeed, the parties cannot even agree on when they first met to discuss the matter.

The first meetings

8 En Frozen originally conducted its business at two stalls in the wet market at Block 1 Geylang Serai. According to its director, Lee Chee Hoon ("Lee"), business was brisk and he was looking to expand. This opportunity came when he succeeded in bidding for the Shop on 10 December 2010. [note: 3] He had plans to turn it into a "mini-supermarket".

9 According to Lee, he approached Singmah through its senior sales executive, Ms Ooi Siew Chen ("Siew Chen") on the very day he succeeded in his bid. Together with En Frozen's general manager, Ms Jenny Tan ("Jenny"), he asked Siew Chen whether Singmah could supply En Frozen with supermarket chillers and freezers. Siew Chen said it could.

10 Then in late December 2011, he provided Siew Chen with a simple layout plan of the Shop. They discussed how the refrigerators were to be laid out and Lee informed her that he wanted the refrigerators to be placed along the wall, like in a supermarket. Siew Chen subsequently drew a sample layout and also told Lee that customised U-shaped refrigerators could be arranged for. [note: 4]

11 Siew Chen denied that these meetings took place. She averred that Lee first approached her sometime in January 2011 with a request that Singmah help him do some drawings in connection with the tender for the Shop. As Singmah did not provide such services, she recommended one Jackie Tan ("Jackie") of Jia Studios to do the drawings. Lee, on the other hand, contended that he had asked for such a recommendation specifically for the purpose of finding someone who could draw up a 3D plan of the layout design that Siew Chen herself had drawn. [note: 5]

12 I believe that the earlier meetings did take place. For example, Siew Chen would have us believe that she had little to do with the layout drawing made by Jia Studios, [note: 6] besides sending a few photos to Jia Studios. [note: 7] She said she told Lee to deal directly with them. But there were two e-mails from Jackie addressed to her that clearly asked for her "inventory list that show[ed] the dimensions". [note: 8] To be precise, they were sent to Singmah's general e-mail address, but that is unsurprising since it appeared that Siew Chen herself used Singmah's general e-mail to send outgoing e-mail, as a subsequent e-mail by her to Jenny demonstrated. [note: 9] It is hard to believe that she did not receive the two e-mails.

The supermarket visits

13 According to Lee, he subsequently briefed Siew Chen on his various requirements for the refrigerators. In particular, he emphasised that he needed the showcase freezers and chiller to have a certain "depth". [note: 10] He also sent Siew Chen photographs of the type of chiller and island freezers that he was looking for. [note: 11]

14 Then on or about 4 March 2011, Lee and Jenny brought Siew Chen to supermarkets in Toa

Payoh to show her examples of refrigerators that he preferred and, for contrast, those that he did not. In particular, Lee pointed out a Carrier-branded showcase freezer at the Shop N Save Supermarket at Block 181 Toa Payoh Central as having the depth he needed in a freezer. He required the showcase freezers and chiller to have sufficient depth because the Shop was small and the rental was high, and Lee wanted the refrigerators to fulfil the dual roles of storage and display.

15 Siew Chen, on the other hand, disputed that Lee said anything about depth at all. She claimed that Lee had only emphasised that the upper compartment of the showcase freezer must not be "too low" to avoid obstructing the customer's view of the lower compartment.

16 Sometime in March 2011 (the date being disputed), [note: 12] Siew Chen informed Lee that Singmah would not be able to fabricate the showcase freezers. She would instead source for the refrigerators from other sources.

Events after visiting the Shop

17 Lee received the key to the Shop on or about 21 March 2011. On that day [note: 13] or the next [note: 14], Siew Chen visited the Shop. Siew Chen took measurements and sketched a layout drawing of the Shop. She also spoke with the electrician, Yeo Guan Chuan ("Yeo"). Lee and Yeo alleged in their respective affidavits that Siew Chen gave Yeo instructions in relation to the installation of electrical points in the Shop. Siew Chen denied this.

18 While in the Shop, Siew Chen also looked at the electricity distribution board ("DB board") to find out the electrical capacity of the Shop and determined that the electrical capacity of the Shop was 126 amps/3 Phase. It is unclear how Siew Chen came to that conclusion. In her affidavit of evidence-in-chief, she said that she got the number from looking at the two DB boards in the Shop (there were two as the Shop was actually made up of two shop units) and adding up the total. [note: 15] However, under cross-examination, she said she did not know how to read the DB board and that it was Yeo, the electrician, who told her that the Shop had 126 amps capacity. [note: 16]

19 Regardless of how she got her impression, it was wrong. A letter from the Housing & Development Board ("the HDB Letter") dated 11 March 2011 to Lee stated that the Shop was provided with 60 amps/3 Phase electrical load. [note: 17]

20 From 11 to 18 April 2011, a number of meetings and discussions took place between Lee, Jenny and Siew Chen. According to Siew Chen, the following occurred:

(a) Siew Chen drew up two proposals, "Proposal A" and "Proposal B", using layout drawings of the positioning of the likely refrigerators to be installed in the Shop. "Proposal A" was premised on refrigerators of the "Hussmann Tempcool" brand while "Proposal B" was premised on Fukushima refrigerators. Lee decided on "Proposal B". [note: 18]

(b) According to Siew Chen, she amended "Proposal B" to incorporate Lee's instructions. There was also a series of discussions regarding where the Fukushima refrigerators were to be placed. Siew Chen alleged that she did advise Lee that there would be an issue of space if the refrigerators were placed as Lee wanted. [note: 19]

(c) Siew Chen also stated that, on or about 18 April 2011, she showed Lee and Jenny catalogue pictures of the Fukushima chiller and freezers. The catalogue pictures contained

information regarding the temperature ranges the refrigerators were capable of and diagrams containing both the external and internal dimensions of the chiller and freezers. [note: 20] This is disputed by En Frozen.

(d) Siew Chen also recommended that, instead of using one compressor to the four showcase freezers in the First Order, it was better to have one compressor to run each showcase freezer so that the breakdown of one compressor would not affect the other freezers. Lee said he followed her advice because he was a layman and left it to Siew Chen "to do what she deem[ed] fit and necessary". [note: 21] (The various parties appear to use the words "compressor" and "condensing unit" interchangeably – for convenience, I will use the word compressor exclusively.)

21 According to Lee, he had intended to buy, in addition to the items in the First Order, two "remote" island freezers as distinct from "self-contained" island freezers. A "remote" island freezer has a remote condenser rather than one built in, and it has some advantages over the latter that Lee liked. However, on 18 April 2011, Siew Chen informed him that she had found out that the Shop did not have sufficient power for all the refrigerators. She advised him to use self-contained island freezers instead of remote island freezers because the electrical voltage for the former was lower. He accepted her advice. [note: 22]

22 Siew Chen, on the other hand, said that it was Lee who wanted the order for the "remote" island freezers to be put "on hold" because he had wanted four such island freezers, and she informed him they would take up too much space in the Shop. [note: 23] Oddly enough, Siew Chen's affidavit did not offer any explanation as to why Lee subsequently ordered self-contained island freezers rather than remote island freezers, as he had always wanted.

Concluding the agreement and subsequent events

23 Siew Chen e-mailed Lee the quotation for the First Order on 19 April 2011 ("the Quotation"). [note: 24] Lee was shocked as the price was far higher than he had expected. Some negotiations over the price followed. During this period, Lee said that Siew Chen told him that there would be a lead time of four to six weeks before the refrigerators could be installed; [note: 25] Siew Chen, on the other hand, said she had informed him that it would take at least eight weeks.

24 Lee signed the First Order Form on 20 April 2011 and issued a cheque for the 50% deposit the same day. The cheque was post-dated to 22 April 2011. [note: 26] It was understood that the order would only be processed upon clearance of the cheque. [note: 27]

25 On 25 April 2011, Siew Chen learnt from Singmah's director, Chong Kok-Kean ("Chong"), that Singmah would be supplying Lee Fukushima freezers which were "Made in Japan" and called Lee to inform him. [note: 28] Prior to this, Siew Chen said she had been sourcing the Fukushima refrigerators from a factory in China but she had not informed Lee of the country of origin until this point. [note: 29]

26 On or around 4 May 2011, Siew Chen sent Jenny drawings of the items in the First Order by way of attachments to an e-mail. The drawings also contained their respective dimensions and temperature. [note: 30]

27 Unfortunately, the delivery and installation of the refrigerators were far from smooth:

(a) Sometime in May 2011, during the renovation of the Shop, it was discovered that the electrical requirements for the Fukushima freezers and chiller exceeded the electrical capacity of the Shop. [note: 31]

(b) Sometime at the end of May 2011, Lee came to the realisation that the refrigerators could not fit comfortably into the Shop. [note: 32] He had to hack out the toilet wall to make more space. [note: 33]

(c) When Lee and Jenny inspected the showcase freezers at Singmah's premises on 21 June 2011, they were significantly shallower than they had expected.

(d) The refrigerators in the First Order were delivered to the Shop on 22 June 2011. This meant that installation would not be completed in time for the Shop's proposed opening date of 30 June 2011. Jenny had to send out SMSes to inform En Frozen's suppliers and friends of the postponement. [note: 34] The actual date of installation is disputed – En Frozen claims it was 8 July 2011 while Singmah claims it was 4 July 2011.

(e) The showcase freezers and chiller could not achieve the temperatures that En Frozen had expected.

(f) The compressors supplied by Singmah were also alleged to be under-powered.

The pleadings

28 As a preliminary point, I must make the observation that the statement of claim was drafted without sufficient care. As I noted in *Firstlink Energy Pte Ltd v Creanovate Pte Ltd and another action* [2007] 1 SLR(R) 1050 at [38]–[39]:

> 38 While properly drafted pleadings do not necessarily result in the success of a claim, improperly drafted pleadings may sound the death knell for an otherwise deserving claim. Even though the court may be inclined to grant redress for a wrong suffered, inadequate pleadings may prove to be a stumbling block to such an end. After all, as Rajendran J aptly noted in *MFH Marine Pte Ltd v Asmoniah bin Mohamad* [2000] 2 SLR(R) 532 at [14]:
>
> > … That motivation [not to allow poorly drafted pleadings to deprive a party of his rights] is laudable but it has to be balanced against the requirement in our system of justice that issues for determination by the court should be carefully framed and all parties should have the opportunity to address the court on those issues before the court adjudicates thereon. …
>
> 39 Viewed thus, it is axiomatic that counsel should exercise care and caution in the drafting of pleadings.

29 Unfortunately, En Frozen's counsel, Mr Subbiah Pillai ("Mr Pillai") failed to heed that advice. Indeed, parts of Mr Pillai's disorganised and ambiguity-ridden statement of claim bordered on inscrutability. Such dismal drafting certainly did not help his client's cause. Mr Pillai was made aware of the defects in his pleadings. Indeed, on the first day of trial, I had invited Mr Pillai to seriously consider making an application to amend his pleadings to focus on what his real causes of action were. [note: 35] It was not the only time I raised the point with Mr Pillai. However, it fell on deaf ears.

30 There were a number of contentions that were (barely) discernible from En Frozen's statement of claim:

(a) The agreements between En Frozen and Singmah are evidenced by documents, oral statements, telephone conversations and meetings between the servants or agents of the parties. [note: 36]

(b) Singmah had failed to satisfy a "condition precedent" that the freezers would be of a certain depth. (It was pleaded that, as a result, that there was "no agreement" between En Frozen and Singmah, but it is unclear what Mr Pillai intended by this.) [note: 37]

(c) Singmah was in breach of contract for:

(i) the late delivery and installation of the refrigerators as it was agreed they would be delivered and installed at the shop on or before the first week of June 2011; [note: 38] and

(ii) the delivery of goods that did not fit the description that Singmah gave En Frozen at the time of agreement; [note: 39]

(d) Singmah was in breach of the following implied conditions under the SOGA:

(i) that the goods would correspond with description pursuant to s 13(1) of the SOGA; [note: 40]

(ii) that of reasonable fitness pursuant to s 14(3) of the SOGA; [note: 41] and

(iii) that of satisfactory quality pursuant ss 14(2), 14(2A) and 14(2B) of the SOGA. [note: 42]

(e) Singmah made the following misrepresentations: [note: 43]

(i) The goods sold to En Frozen were of satisfactory quality.

(ii) The goods would meet "the requirement of [En Frozen's] purpose for which they were ordered".

(iii) The goods would correspond with the stipulations supplied by En Frozen.

(iv) The electrical supply at the Shop was sufficient to run the four showcase freezers and one chiller.

(f) Rather confusingly, in apparent contradiction to [30(e)(iv)] above, En Frozen also pleaded that Singmah had misrepresented that the electrical supply the Shop would *not* be able to support and run the four showcase freezers, one chiller *as well as* two "remote" island freezers. [note: 44]

31 The main limbs of Singmah's defence were as follows:

(a) The terms of the agreements for the supply of the refrigerators were embodied in various

written documents, including the Order Forms. [note: 45] There was no "condition precedent" with respect to the agreements. [note: 46]

(b) There were no misrepresentations to En Frozen. Even if there were representations made, Singmah (and/or its agents or servants) honestly believed them to be true. [note: 47]

32 In addition, Singmah also pleaded that the Supply of Goods Act (Cap 394, 1999 Rev Ed) ("the Supply of Goods Act"), and not the SOGA, should have been the applicable statute. [note: 48] However, s 2(1) of the SOGA states that: "a contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price". Whatever the precise terms of the contract, it is clear that the essence of the contract in this case was the sale and delivery of refrigerators by Singmah to En Frozen (see the observations of G P Selvam J in *Management Corporation Strata Title Plan No 1166 v Chubb Singapore Pte Ltd* [1999] 2 SLR(R) 1035 at [59]). Indeed, the First Order Form itself refers to "Conditions of Sale". [note: 49]

33 Therefore, En Frozen correctly pleaded that the SOGA applies. For the sake of completeness, it is also clear that the Supply of Goods Act does not apply. The Supply of Goods Act applies to contracts for the transfer of goods. Such a contract is defined in s 1(1) of the Supply of Goods Act as a contract under which one person transfers or agrees to transfer to another the property in goods, *other than an excepted contract*. Under s 1(2) of the said Act, an excepted contract includes a contract of sale of goods.

Findings

There was an oral contract

34 It is not disputed that the First Order Form could not have embodied the entirety of the agreement between the parties with regard to the First Order. It contained no information as basic as the brands, models, achievable temperature range, country of origin or the internal dimensions (including depth) of the refrigerators.

35 As a result, both parties required extraneous evidence to prove the terms of the contract. Singmah had to rely on, among others, the layout drawing by Jia Studios, the Quotation, the Fukushima catalogue that Siew Chen allegedly showed Lee and Jenny, as well as the drawings in the e-mail of 4 May 2011 (which were sent only *after* the contract was concluded). [note: 50] None of these documents was referred to in the First Order Form itself.

36 Indeed, it can be inferred from Singmah's own case that the written documentation may not be exactly accurate or complete. The Quotation expressly stated that the "Lead Time for tailor made's [*sic*] product = 4 – 6 weeks". (Siew Chen had agreed during cross-examination that this was an order for a customised product. [note: 51]) But it is Siew Chen's evidence that she told Lee orally that it would actually take eight weeks instead.

37 Clearly, this was not a situation where one party could simply point to a self-contained set of documents and say conclusively that the agreement had been comprehensively reduced into writing. Considering the informality of the transaction and the general scarcity of particulars in the documentation, I find that the agreement between the parties is not confined to only what was stated in specific documentation produced by the parties, but includes terms which were concluded orally as well.

There was late delivery of the First Order

38 After reviewing the evidence, I am of the view that, at the time of contract, Siew Chen had represented to Lee that the items in the First Order would be delivered and installed within four to six weeks from 20 April 2011 (*ie*, the date of the signing of the First Order Form), that is, on or before the first week of June 2011. I am not persuaded by Siew Chen's assertions that she told Lee that delivery would take eight weeks from 26 April 2011 (*ie*, the date the cheque given by Lee was cleared). I also do not think that Siew Chen informed Lee that the installation would take 15 working days after delivery, which according to Chong, was the usual length of time needed to install the showcase freezers and chiller. [note: 52]

39 First, the period of four to six week was expressly provided in the Quotation given to En Frozen. Lee was entitled to rely on the same. The onus was on Siew Chen to let him know if it was otherwise. She could easily have indicated this on the Quotation or the First Order Form. She did not do so. I am not convinced by her explanation that she did not write anything regarding the unusual 8-week timeframe (as well as the further time needed for installation) because she wanted to avoid "many alterations to the form" and that it was Singmah's standard practice not to write the delivery date. [note: 53]

40 Second, Singmah set great store by the fact that the delivery date on the First Order Form had been left blank at the time of signing. Siew Chen said she did not put down a specific delivery date initially because she did not know when the goods would arrive. [note: 54] But it does not necessarily follow that the parties did not agree as to the period of time required. After all, the First Order Form lacked even basic particulars, as I pointed out earlier.

41 Third, it was apparent that En Frozen was anxious to open the Shop as soon as possible. This was indicated by an SMS sent by Jenny at Lee's urging to a contractor on 8 April 2011 that the job had to be done on an urgent basis as it had been delayed for too long and "rental [was] running daily". [note: 55] There was a misrepresentation on Jenny's part in that it was untrue that "rental" was running; the HDB Letter [note: 56] had stated that the Shop was eligible for a 2-month rent-free period, meaning that En Frozen only needed to pay rent from June 2011. [note: 57] Nevertheless, it showed that En Frozen had been hurrying the contractor as early as 8 April 2011.

42 Fourth, En Frozen's version accords better with what subsequently took place. There is no question that En Frozen had arranged for an opening ceremony for the Shop on 30 June 2011, as evidenced by the SMSes from Jenny on 27 June 2011, informing third parties of the opening. [note: 58] I do not think En Frozen plucked that date out of thin air. The date is consistent with there being an agreement that the items in the First Order would be delivered within four to six weeks of the First Order. Even if Siew Chen did inform Lee that the installation of the items in the First Order would take 15 working days after delivery, [note: 59] the expected completion date would still be *before* 30 June 2011. En Frozen would have picked a date for the opening ceremony within the timelines given to it by the various contractors and suppliers, and would not have arbitrarily chosen one that was obviously unattainable as Siew Chen would have us believe.

43 For similar reasons, it is also unlikely that Lee only told Siew Chen of the opening date on 20 June 2011 as that was just ten days before the date of the proposed opening ceremony. However, it is clear that the date of 30 June 2011 was not made known to Siew Chen before or at the time the contract was made. This point came out clearly during Lee's cross-examination: [note: 60]

Q: I put it to you that at the time of negotiation with the defendant, the plaintiff did not inform the defendant that the goods must be delivered and fitted on or before the 30th of June 2011.

A: I disagree. Your Honour, I have something to say. I signed the contract on the 20th of April. … So counting from 20th of April, 4 to 6 weeks will bring us to the end of May. So I went to seek some opinion and the next auspicious date would be later than end of May. So after I have gotten the date, I informed Siew Chen that the opening ceremony will be held on 30th of June and it can exceed 30th of June. From the end of May to 30th of June, that will be about a month. So I have already given a month but never did I expect her that she will still delay the opening ceremony.

44 Obviously, Lee could not have informed Siew Chen of the date of the opening ceremony before the contract was concluded if he had only gone to find out an auspicious date after he had signed the First Order Form.

45 Be that as it may, for the reasons given above, I find that Singmah was in breach of an agreement to deliver and/or install the refrigerators in the First Order by the first week of June 2011.

46 There was a dispute as to when exactly the refrigerators in the First Order were installed. Singmah said 4July 2011 while En Frozen said 8 July 2011. Strictly speaking, this is only relevant to the issue of *damages*. Singmah appeared to have taken a rather literal approach in maintaining that they had installed everything and that the refrigerators could run on 4 July 2011. But the real issue is this: What was the *earliest* possible date that En Frozen could have opened the Shop as a result of Singmah's delay?

47 En Frozen could only have opened the Shop after getting a supermarket licence from the National Environmental Agency ("NEA"). This entailed an examination by an NEA officer of the refrigerators as well as En Frozen's stock. [note: 61] Siew Chen said that En Frozen had told her they wanted to "monitor the temperature first" before starting business. [note: 62] Four days is not an unreasonable period to ensure everything was working properly in order to pass the check by NEA. I therefore find that the earliest possible date was 8 July 2011.

There was no misrepresentation or agreement that the showcase freezers would be of a certain depth

48 I am prepared to accept that Lee had mentioned to Siew Chen his preference that the showcase freezers should have similar depth to those of the Carrier brand that he saw at Shop N Save (*ie*, the depth of the lower compartment should be 340mm) and that the chiller should also have base shelves located close to the floor. It was obvious that the depth of the refrigerators was very important to him. This was brought out in para 44 of Siew Chen's affidavit of evidence-in-chief, where Siew Chen described how, on 22 June 2011, Lee called her and said that he could not sleep the whole night after seeing the freezers and chiller for the first time and asked her how she could have recommended him freezers the lower compartments of which were so shallow when he had previously brought her to Shop N Save to look at the Carrier freezers. [note: 63]

49 However, I am not convinced that Siew Chen actually made any promise or representation that the showcase freezers would be at least as deep as the Carrier freezers. Moreover, on 18 April 2011, Siew Chen had shown Lee and Jenny a brochure containing pictures of the Fukushima showcase

freezers and chiller, as well as a diagram of the specific dimensions (both internal and external) of the showcase freezers. Even if Lee and Jenny were not shown the brochure, Siew Chen had sent Jenny the drawings containing the exact dimensions of the showcase freezers and chiller as attachments in the email of 4 May 2011. For his part, Lee did not deny that Jenny did hand the drawings to him and that he did look at them. [note: 64]

50 Accordingly, I find that there was no agreement or representation by Singmah that the refrigerators in the First Order would be of a stipulated depth, and therefore that there was neither a breach of an express term of the contract nor any actionable misrepresentation. As the First Order did correspond with the dimensions in the e-mail of 4 May 2011 as well as those in the First Order Form, Singmah was also not in breach of the implied condition that the goods would correspond with the description under s 13(1) of the SOGA.

Singmah had provided En Frozen with showcase freezers that could not fit into the Shop

51 It is not disputed that the Fukushima refrigerators could not fit into the Shop without further alterations to the shop, namely, by knocking down a toilet wall to make space. There was plenty of finger-pointing as to who exactly was responsible for the planned layout of the Shop. Regardless of the extent of Siew Chen's involvement in the planning of the layout of the refrigerators, she was aware of the planned layout *before* the First Order Form was signed. Indeed, she claimed that she told Lee that the Fukushima refrigerators would not properly fit into the Shop because the distance between one side of one of the 8ft showcase freezers and a 6ft showcase freezer was "less than 340mm". [note: 65]

52 In any event, I am inclined to discount Siew Chen's testimony that she had known all along that the refrigerators would not fit. From the beginning, Siew Chen attempted to minimise her role in the designing of the layout of the Shop. I do not think her role was as minor as she claimed. Furthermore, Lee had reposed a good amount of trust and reliance on Siew Chen, as is evident from the totality of the transaction, and I do not believe that Lee would simply ignore Siew Chen's advice or that Siew Chen was so unprofessional that she would knowingly supply goods that she *definitely* knew were not fit for her customer's purpose.

53 Section 14(3) of the SOGA states:

> (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known -
>
> (*a*) to the seller; or
>
> (*b*) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker,
>
> 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, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker.

54 There is no question but that the goods under the First Order were sold by Singmah in the course of its business. En Frozen had made known to Singmah that the refrigerators were to be placed in the Shop. The refrigerators in the First Order were not reasonably fit for that purpose.

55 As for reliance, the rule is that "once the purpose is conveyed to the seller, reliance on the part of the buyer need not be shown but it may be rebutted and it is for the seller to do this" (see *Compact Metal Industries Ltd v PPG Industries (Singapore) Ltd* [2006] SGHC 242 at [108]). This presumption has not been rebutted by Singmah. In the result, I find that En Frozen did rely on Singmah to provide refrigerators that could be accommodated in the Shop, and that it was not unreasonable for it to do so.

56 Singmah was therefore in breach of the implied condition of reasonable fitness for purpose under s 14(3) of the SOGA.

The showcase freezers and chiller were capable of reaching the stated temperature range

57 The attachment to the e-mail dated 4 May 2011 also indicated the temperature ranges of the showcase freezers (–20°C to –25°C) and the chiller (3°C to 7°C). The indications were not in small print and would have been readily apparent to a reader at first glance.

58 En Frozen's case on this point was that Lee had informed Siew Chen of its particular cold storage needs, but Siew Chen had supplied it with refrigerators that were not cold enough. With respect to the chiller, En Frozen's complaint was that the temperature range of 3°C to 7°C was wholly unsuitable for the storage of chilled meat.

59 Siew Chen, on the other hand, said that Lee never said anything about it. She averred that Lee had told her that the chiller was for milk and drink for which 3°C to 7°C was suitable. Indeed, Lee even sent her a picture of a chiller storing milk and drinks. [note: 66] In this instance, I find that on a balance of probabilities, En Frozen had not demonstrated that Lee had in fact informed Siew Chen of what he intended to store in the chiller.

60 Lee was experienced in the sale of chilled and frozen food. It is improbable that he did not understand the significance of the temperature ranges stated in the attachment to the e-mail dated 4 May 2011. Singmah has therefore not breached any contractual term (whether implied or express) nor made any misrepresentation with respect to whether the showcase freezers and chiller were actually *capable* of achieving the indicated temperatures.

The showcase freezers could not reach their stated temperature range because Singmah provided under-powered compressors

61 While the chiller *did* consistently maintain its stated temperature range of 3°C to 7°C, the showcase freezers could not. (The showcase freezers had a stated temperature range of –20°C to –25°C.) Singmah's expert witness, Mr Chee Yan Pong ("Mr Chee"), a professional engineer as well as a former president of the Singapore Chapter of the American Society of Heating, Refrigerating, Air-conditioning Engineers, [note: 67] found that the temperatures achievable at the site for the showcase freezers varied around –11°C to –20°C at the upper decks and around –11°C to –24°C at the lower decks. The temperatures of –23°C for the upper decks and –25°C for the lower decks were reached two to three hours a day, when the Shop was closed for business. [note: 68]

62 This was obviously not acceptable. Singmah submits that it did comply with the terms of the contract because the showcase freezers could reach its stated temperature range. [note: 69] But would a reasonable person think that a freezer with a temperature range of –20°C to –25°C should only be able to achieve those temperatures for two to three hours a day? The reasonable expectation must surely be that the showcase freezers would be able to maintain that temperature range

consistently under ordinary circumstances. A reasonable person would not expect the temperature to rise to as high as –11°C during normal use.

63 The cause was that the compressors selected and installed by Singmah were under-powered. Mr Chee made the following findings in his Expert Report: [note: 70]

(a) The compressors selected and installed by Singmah did not comply with the recommendation of the manufacturer and supplier of the refrigerators.

(b) It is not the industrial practice to operate each freezer in a group of freezers with its own independent compressor. The reason is that the freezers' storage compartments are interconnected as a single storage space with a common operating temperature and defrosting cycle.

(c) The selection of the compressors did not take into account the following technical considerations:

(i) The energy required to overcome pipe losses due to the length of the pipe of the remote compressors, located at the ceiling above the Shop and routed down to the locations of the refrigerators.

(ii) The fouling factor of the refrigerant pipework, when used for some time.

(iii) The normal wear and tear of the compressors, in the form of spare capacity, thus allowing for reasonable loss of efficiency of the engineering equipment.

64 Singmah's counsel, Mr Leonard Lim, objected to Mr Chee's evidence on the grounds that Mr Chee based his findings on a Fukushima report (tendered in court and marked as P5) which contained many errors and had not been formally admitted into evidence. [note: 71] The crux of the argument was that Mr Chee's report was unreliable because the data he based his findings on were unreliable. The Fukushima report had made use of inconsistent conversion factors to convert from kilocalories per hour to watts. [note: 72]

65 I do not think this rendered Mr Chee's evidence unreliable. He did not rely on Fukushima's conversions. In fact, Mr Chee spotted the error and used the correct factor of 1.16 to convert the data from kilocalories per hour to watts. I also accept Mr Chee's evidence that he did verify the basic data, before he did his calculations. [note: 73]

66 Furthermore, his conclusion was supported by Wada Minoru ("Wada"), the director of Fukusima International Singapore Pte Ltd, who said in his affidavit that he had informed En Frozen that in order to solve their problems they should change to higher capacity compressors. [note: 74] I do not think Wada had any reason to lie, despite Chong's allegations. [note: 75]

67 Singmah submits that environmental or surrounding conditions may have contributed to the failed optimal performance of the freezers. [note: 76] But this was also not supported by the testimony of the various representatives from Fukushima. Again, I do not think they had any reason to lie. In fact, their participation and assistance in the installation of the refrigerators were entirely *gratis*. [note: 77] On its part, En Frozen had attempted to improve the showcase refrigerator's performance by installing an air-conditioner and providing an air curtain at the entrance to the shop, but to no avail.

68 In my view, Singmah supplied En Frozen with compressors that were under-powered and therefore not reasonably fit for the purpose of being used with the showcase freezers. En Frozen did rely, and it was reasonable for En Frozen to have relied, on the skill or judgment of Singmah in this regard. Therefore, Singmah did breach the implied condition of reasonable fitness for purpose under s 14(3) of the SOGA.

Miscalculation of the electrical supply of the Shop

69 Siew Chen, quite rightly, conceded that it was her responsibility to check whether there was sufficient electrical capacity in the Shop for the equipment she was to supply to En Frozen. [note: 78] But she miscalculated. As a result, the Shop's electrical requirements exceeded the Shop's electrical supply. [note: 79] Therefore, Singmah breached the implied condition of reasonable fitness for purpose under s 14(3) of the SOGA.

70 However, it is not immediately obvious what loss was caused to En Frozen. Mr Chee said in his Expert Report that the "proposed equipment [could not] perform and serve their design functions, if there [was] inadequate power supply for the designed systems". [note: 80] He also stated the following at para 8.6 of the Expert Report:

> With the failure to upgrade the electrical power supply for the mini-supermarket and ignoring the recommendations of the equipment manufacturer, Fukusima, [Singmah] provided undersized compressors. …

But it is unclear whether he meant that an upgrade of the electrical capacity of the Shop was required in order to drive the proper compressors, or not.

71 Moreover, the legal implications of Siew Chen's miscalculation were complicated by Mr Pillai's contradictory pleadings in this respect. First, paras 16 and 17 of the statement of claim averred:

> 16. [En Frozen] had later obtained expert advice from consultants who had informed [En Frozen] that the electrical power supply at [En Frozen's] shop was insufficient to run all the 4 units of open showcase freezers; 1 unit of open show case chiller and 2 units of remote island freezers (change to self-contained island freezers [*sic*]) which are fitted in [En Frozen's] shop presently. …
>
> 17. Thus the representation made by [Singmah] that the electrical supply at [En Frozen's] premises was sufficient to run the 4 units of open show case freezers and 1 unit of chiller were [*sic*] incorrect and/or untrue and/or false and [Singmah] delivered defective and wrong goods to [En Frozen] in breach of the terms and condition which were agreed.

Then at para 23(g) of the statement of claim it was pleaded as follows:

> 23. The evidence in detail can be seen from the following documents and oral evidence and further the agreements stated that the goods would have the following qualities in breach of Section 14 of the Sales of Goods Act Cap [393].
>
> …
>
> g. Wrong calculation provided by [Singmah] both in respect of the electrical supply and length of the shop to accommodate the 4 units of open showcase freezers and 1 unit of

Chiller.

Later, with respect to the Second Order, En Frozen averred:

> 56. [En Frozen] later got the services of a contractor who did a survey and found out that the electricity supply at [En Frozen's] premises was sufficient to run the 4 units of open showcase freezers together with 2 units of remote island freezers and 1 unit of Chiller.
>
> 57. As such [Singmah] advised [*sic*] that the electricity supply at [En Frozen's] premises was not sufficient to run 2 units of remote island freezers was wrong and [Singmah's] supplying 2 units of self-contained island freezers to [En Frozen] instead of two units of remote island freezers was without any basis and was clearly the supply of wrong goods by [Singmah] to [En Frozen].

72 It is unclear how Siew Chen could have made representations which were *both* wrong regarding the sufficiency *and* insufficiency of the power supply at the Shop. Perhaps Mr Pillai meant that Singmah should have advised En Frozen that it was possible to have sufficient electrical supply if an application to the HDB for additional capacity was made. However, I do not think that Singmah could be faulted for not recommending an increase in the electrical supply if *Lee himself had misled Siew Chen*. On 17 May 2011, he sent the following SMS to Siew Chen: [note: 81]

> ... Kindly b informed that if u need additional electricity supply, costs will be *$50k 2 $60k*. Time will b abt *6 mths*. U shall b liable 4 all costs n time taken as this is due 2 yr negligence [*sic*]. … [emphasis added]

73 In actual fact, the cost was $5,500, as stated by Mr Chee in his Expert Report. Further, Lee himself indicated that it was Jenny who asked an HDB officer named Daniel for the information contained in the SMS to Siew Chen. [note: 82] In this regard, I am inclined to believe Siew Chen's testimony that Lee had told her at a subsequent meeting that he did not want to increase the electrical supply because it would cost too much. [note: 83] En Frozen's failure to upgrade its electrical supply was therefore not the result of Siew Chen's misrepresentation or failure to advise, but due to Lee and Jenny's own misapprehension.

74 In any case, even if Siew Chen had so advised, it appears that market practice is that the cost of such an upgrade should be borne by En Frozen. Mr Chee stated the following at para 8.3 of the Expert Report:

> … The cost for the upgrading of the HDB power supply from 60 amperes to 100 amperes would be of the order of *S$5,500.00 only*. The indicative cost had been provided in the HDB agreement. *In any way, the payment for the upgrading of the electrical supply should be borne by [En Frozen] and not a financial concern of [Singmah]*.
>
> [Singmah] should have established that the existing electricity supply was insufficient and should have taken appropriate actions to apply with HDB, on behalf of [En Frozen], for the necessary upgrading to 100 Amperes, 3 phase, *with the required cost to HDB borne by [En Frozen]*.
>
> [emphasis added]

75 However, I am prepared to accept En Frozen's case that costs were wasted as a result of changes to the electrical works of the Shop due to Siew Chen's miscalculation. It is clear that this was a matter between Siew Chen and the electrician, Yeo. Lee was a layperson and did not have the

expertise to get involved in such technicalities, even if he had the desire to do so. Siew Chen said that Lee was always present during discussions between her and Yeo, but even if that were true, I cannot imagine that he would have been in a position to give instructions. [note: 84]

76 Furthermore, I found Yeo to be a credible and straightforward witness. He struck me as a no-nonsense kind of person. The electrical needs of the refrigerators were within the special knowledge of Siew Chen. He had to rely on Siew Chen's instructions to proceed, and there was no reason for him to carry out electrical works that were contrary to those instructions.

77 Of course, when those instructions were clearly wrong, Yeo questioned them. So when sometime in May 2011, Siew Chen told him to install five units of 13 amps power points above where the showcase freezers were to be placed, he asked her why. Siew Chen said it was for the lighting and heater (used to melt excess ice) of the freezers. Yeo questioned this, saying that the power points would be inaccessible if placed above the freezers, and that the freezers should have wiring in them to support the lights and freezers. Siew Chen told him just to listen. Yeo asked Lee about this. Lee told him to listen to her. [note: 85]

78 On the same day, Siew Chen told him to install isolators (five units of 32 amps/3 Phase and five units of 13 amps/1 Phase) that obviously exceeded the Shop's existing electrical capacity. Yeo informed her that it would not work. She said she would recalculate. Later that month, she told him to change the original 3-phase isolators to single phase isolators. [note: 86]

79 However, after the items in the First Order were delivered to the Shop, he was told by Siew Chen to change the installation back to 3-phase isolators, as those were needed for the showcase freezers to work. The cost of the changes was paid by En Frozen. [note: 87]

Remedies

80 In summary, I find that:

(a) Singmah was in breach of an express term of the contract that the items in the First Order should be delivered by the first week of June 2011, resulting in a 9-day delay in the opening of the Shop.

(b) Singmah was in breach of the implied condition of reasonable fitness for purpose under s 14(3) of the SOGA for supplying refrigerators which could not reasonably fit in the Shop, requiring the knocking down of the toilet wall.

(c) Singmah was in breach of the implied condition of reasonable fitness for purpose under s 14(3) of the SOGA for supplying under-powered compressors.

(d) Singmah was in breach of the implied condition for reasonable fitness for purpose under s 14(3) of the SOGA for supplying refrigerators that exceeded the electrical supply of the Shop, resulting in the need to change the electrical points of the Shop.

81 En Frozen sought rescission of the First Order. However, it has been two and a half years since the refrigerators were delivered on 22 June 2011. It is plainly inequitable for the goods to be returned now. In any case, En Frozen had accepted the goods.

82 As for damages sought, it is obvious that Mr Pillai did not think through the issue properly. For

example, En Frozen claimed damages for loss of business from 2 June 2011 to 8 July 2011. But obviously there was no loss of business starting from 2 June 2011 since En Frozen had set its opening date for 30 June 2011. Moreover, the amount pleaded ($400 a day) was at odds with the Notice of Assessment of Income Tax for Year of Assessment 2013 served on En Frozen which suggested that En Frozen's average daily profit after tax was $1,687.75. [note: 88]

83 There were also other miscalculations. In En Frozen's closing submissions, Mr Pillai adduced in evidence a number of figures of loss which were *higher* than what was claimed for in the statement of claim. For example, he cited a figure of $5,220 for extra electrical work done, but only $1,550 in the statement of claim for costs of "additional electrician charges to change the electrical points and supply". It is not possible to amend a statement of claim *via* submissions. I am therefore not prepared to award the higher sum in such circumstances.

84 In fact, Mr Pillai's claims for damages were confusing and chaotic. For example, he pleaded loss incurred in additional renovation works to the Shop at $2,362.56. He referred to a tax invoice that did not seem to support that figure. [note: 89] It also contradicted Lee's statement that the renovation costs were $350. [note: 90] I would therefore award the lowest sum claimed.

85 Finally, although the compressors for the showcase freezers were under-powered, it is unclear what quantum of damages was sought. Seeking a rescission of the First Order, Mr Pilai did not consider fully the alternative remedy of damages. For example, En Frozen gave no evidence as to how long it would take to install a new compressor. In his closing submissions, Mr Pillai estimated a period of four to eight weeks to replace the freezers, chiller and compressors. No evidence was given as to how that was arrived at. Perhaps the estimate was based on the fact that it took more than eight weeks for the items in the First Order to be *delivered* and installed. But there is certainly no need to close the Shop before the compressors arrive – surely, only the installation time is relevant. Such sloppiness shows that En Frozen's estimates are unreliable. At this juncture, I think it is appropriate to set out the following observations of L P Thean J in *L&M Airconditioning & Refrigeration (Pte) Ltd v S A Shee & Co (Pte) Ltd* [1993] 2 SLR(R) 346 (at [10]–[11]):

> 10 Similarly, in respect of the plaintiffs' liability for the delay, the defendants adduced no evidence to show the proper basis for apportioning the liquidated damages attributable to the delay on the part of the plaintiffs. Damage the defendants had suffered by reason of the plaintiffs' delay, but the question was what part of the liquidated damages should be borne by the plaintiffs. Chwee Meng Chong, the managing director of the defendant company, testified that the defendants had paid to the building owner liquidated damages in the sum of $548,000, calculated at the rate of $6,000 per day for 90 days – this was not disputed. He apportioned to the plaintiffs the sum of $48,000 as liquidated damages for eight days and this apportionment was based on the proportion by which the subcontract value bore to the whole of the main contract value. That was not a rational apportionment and was unsupported by any authority. I rejected it. Having rejected it, I found that there was no basis on which I could properly apportion the amount and it would be too arbitrary for me to take a random sum and say that that was the amount for which the plaintiffs were liable under this head of the claim. I had no alternative but to award only nominal damages.
>
> 11 This case is quite different from those cases where damage has not been suffered and nominal damages are awarded as a token. McGregor on Damages (15th Ed, 1988) at p 250 at para 399 states:
>
> > Nominal damages may also be awarded where the fact of a loss is shown *but the necessary*

evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case *the problem is simply one of proof*, one not of absence of loss but of absence of evidence of the amount of loss.

[emphasis added]

Similarly, in the present case, adequate evidence of damages arising from the under-powered compressors has not been properly adduced. I therefore award nominal damages of $1,000 in this regard.

Conclusion

86 In total, I award En Frozen damages of $8,100 and interest:

(a) Loss of profit from 30 June 2011 to 8 July 2011 (nine days) at $400 per day: $3,600.

(b) Cost of hiring a Qualified Person to submit plan to HDB: $1,600.

(c) Cost of knocking down toilet wall: $350.

(d) Cost of additional charges to change electrical points and supply: $1,550.

(e) Nominal damages for the supply of under-powered compressors: $1,000.

87 Since rescission is not possible, Singmah's counterclaim for $63,558 and interest is allowed. En Frozen complained vociferously about having been overcharged but that does not *per se* entitle En Frozen to refuse to pay, considering that it had agreed to the price quoted.

88 I will hear the parties on costs.

[note: 1] Lee's AEIC, LCH-41.

[note: 2] Chong Kok Kean's AEIC, para 10.

[note: 3] Lee's AEIC, para 3.

[note: 4] Lee's AEIC, para 8.

[note: 5] Lee's AEIC, para 10.

[note: 6] Siew Chen's AEIC, para 6.

[note: 7] Transcript dated 17 Sep 2013, p 24, lines 11-19.

[note: 8] PBD.10.

[note: 9] Siew Chen's AEIC, p 58.

[note: 10] Lee's AEIC, para 16.

[note: 11] Lee's AEIC, para 17 and LCH-9.

[note: 12] Lee's AEIC, para 21; Siew Chen's AEIC, para 8.

[note: 13] Lee's AEIC, para 21.

[note: 14] Siew Chen's AEIC, para 10.

[note: 15] Siew Chen's AEIC, para 10(d).

[note: 16] Transcript dated 17 Sep 2013, p 91, lines 22-31.

[note: 17] PBD.14.

[note: 18] Siew Chen's AEIC, para 14.

[note: 19] Siew Chen's AEIC, para 16(e).

[note: 20] Siew Chen's AEIC, paras 17-18.

[note: 21] Lee's AEIC, para 36.

[note: 22] Siew Chen's AEIC, para 34.

[note: 23] Siew Chen's AEIC, para 19.

[note: 24] Siew Chen's AEIC, para 20.

[note: 25] Lee's AEIC, para 38.

[note: 26] Siew Chen's AEIC, paras 21-23.

[note: 27] Lee's AEIC, para 39.

[note: 28] Siew Chen's AEIC, para 24.

[note: 29] Transcript dated 17 Sep 2013, p 52, lines 1-8.

[note: 30] Siew Chen's AEIC, para 26.

[note: 31] Siew Chen's AEIC, para 39; Lee's AEIC, para 41.

[note: 32] Lee's AEIC, para 44; Siew Chen's AEIC, para 42.

[note: 33] Lee's AEIC, para 45; Siew Chen's AEIC, para 48.

[note: 34] Lee's AEIC, para 65.

[note: 35] Transcript dated 10 Sep 2013, p 2, lines 9-30.

[note: 36] Statement of claim, para 5.

[note: 37] Statement of claim, paras 6-7.

[note: 38] Statement of claim, paras 44-50.

[note: 39] Statement of claim, para 41.

[note: 40] Statement of claim, paras 9 and 24.

[note: 41] Statement of claim, paras 23, 25 and 30.

[note: 42] Statement of claim, para 27.

[note: 43] Statement of claim, paras 10-11.

[note: 44] Statement of claim, para 18(a).

[note: 45] Defence, paras 6, 7 and 9.

[note: 46] Defence, para 13.

[note: 47] Defence, para 22.

[note: 48] Defence, para 18.

[note: 49] DBD.8.

[note: 50] Defence, paras 6 and 7.

[note: 51] Transcript dated 17 Sep 2013, p 38, lines 27-30.

[note: 52] Chong's AEIC, para 25.

[note: 53] Transcript, dated 17 Sep 2013, p 20, line 5-26.

[note: 54] Siew Chen's AEIC, para 23.

[note: 55] Lee's AEIC, para 14 and LCH-7.

[note: 56] Lee's AEIC, LCH-6.

[note: 57] Defendant's Closing Submissions, para 11.

[note: 58] Lee's AEIC, pp 117-120.

[note: 59] Chong's AEIC, para 15.

[note: 60] Transcript dated 10 Sep 2013, p 42, lines 20-32; p 43, lines 1-2.

[note: 61] Lee's AEIC, para 66.

[note: 62] Transcript dated 17 Sep 2013, p 106, lines 21-22.

[note: 63] Siew Chen's AEIC, para 44.

[note: 64] Transcript dated 10 Sep 2013, p 50, line 7.

[note: 65] Siew Chen's AEIC, para 16.

[note: 66] Lee's AEIC, p 29.

[note: 67] Expert Report, para 1.2.

[note: 68] Expert Report, para 7.10.

[note: 69] Defendant's Closing Submissions, para 37.

[note: 70] Expert Report, pp 21-22.

[note: 71] Defendant's Closing Submissions, p 33.

[note: 72] Transcript dated 13 Sep 2013, p 42, lines 10-15.

[note: 73] Transcript dated 13 Sep 2013, p 47, lines 7-14.

[note: 74] Wada's AEIC, para 10.

[note: 75] Transcript dated 18 Sep 2013, p 35, lines 16-21.

[note: 76] Defendant's Closing Submissions, para 37.

[note: 77] Vincy's AEIC, para 7.

[note: 78] Transcript dated 17 Sep 2013, p 88, lines 15-26.

[note: 79] Expert Report, para 6.1.

[note: 80] Expert Report, para 8.3.

[note: 81] Lee's AEIC, LCH-25, p 86.

[note: 82] Lee's AEIC, para 42.

[note: 83] Siew Chen's AEIC, para 36.

[note: 84] Transcript dated 17 Sep 2013, p 93, lines 26-32 to p 94, lines 1-2.

[note: 85] Yeo's AEIC, paras 7-8.

[note: 86] Yeo's AEIC, paras 9-10.

[note: 87] Yeo's AEIC, para 11.

[note: 88] 2PBA, Tab 23.

[note: 89] Statement of claim, para 65(c); Plaintiff's Closing Submissions, p 43, item 6(f); PBD.114-115.

[note: 90] Lee's AEIC, para 47.

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