SELECTED UNREPORTED DECISIONS

Tan Keow Jong t/a Summit International Trading Co.
v.
Lau Ka Nuai (f) t/a Star Lady Garments Company

District Court Summons No. 4505 of 1978

The defendant, a manufacturer of garments, supplied 13 samples of dresses together with quotations to the plaintiff, who was in the business of importing and exporting children's wear and garments. The plaintiff's brother, PW2, brought these samples to Jeddah in Saudi Arabia and displayed them at the premises of the plaintiff's agent there. The plaintiff then received an order for 100 dozens of maxi dresses of the sample listed as No. 1912.

An agreement was entered into whereby the defendant agreed to sell and the plaintiff to buy "100 dozens of ladies maxi of size 34/40 as per sample article No. 1912." The defendant completed the order and delivered the dresses. As the original sample No. 1912 had remained with the plaintiff's customer in Jeddah, the plaintiff was unable to compare the dresses with the sample. After the dresses were shipped to Jeddah, the plaintiff's customer complained that the dresses differed materially from the sample supplied. The plaintiff subsequently was compelled to pay US$2000/- compensation (the amount being 20% of the CIF price), to the customer as a condition for acceptance of these dresses by the customer, and for the return of sample No. 1912 to the plaintiff.

The plaintiff sued the defendant for breach of the agreement for sale by sample, alleging that the goods supplied did not correspond with the sample. The defendant denied that the sale was by sample, that the goods delivered did not correspond with the sample or that there were such defects as to render them unmerchantable.

Held: (1) The contract of sale of the 100 dozen dresses was a contract for sale by sample.

(2) The dresses delivered under the contract not only did not correspond with the sample provided, but were of an inferior quality.

(3) As the original sample No. 1912 had been retained by the plaintiff's customer in Saudi Arabia, there was no reasonable opportunity for inspection by the plaintiff before acceptance of delivery.

(4) The plaintiff is entitled to damages of US$2000/-, the 20% discount that he had to give to his customer.

[Summary by T. Shue]

Commentary: Whatever might be the state of cohfusion[1] as to the scope of section 5, Civil Law Act,[2] one thing is at least clear — the English Sale of Goods Act, 1893[3] is received in Singapore *via* section 5.[4]

In this case, the contract is one for the sale of goods by sample and thus governed by section 15 of the Sale of Goods Act.[5] This provision represents one of the interventions by the legislature to mitigate the rigours of the common law doctrine of *caveat emptor*.[6] Under this provision, where the contract is a sale by sample, there are implied conditions that the bulk shall correspond with the sample in quality,[7] that the buyer shall have a reasonable opportunity of comparing the bulk with the sample,[8] and that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.[9]

The most curious feature of this case is, of course, the fact that nowhere in the grounds of decision[10] can be found a passing reference to section 15 of the Sale of Goods Act, even though it is the governing statutory provision that must be applied.[11] The Court, after considering all the evidence before it, ruled that the contract in the instant case was one of sale by sample.[12] Since no reliance is placed on the governing statutory provision, one expects, not unreasonably, that the

1 For a sampling of the academic discussion generated, see generally: Chan Sek Keong, "The Civil Law Ordinance, section 5(1): A Reappraisal" [1961] M.L.J. Ivii and Ixvi. See also, N. Vaithinathan, "Logic And The Law — A note on section 5(1) of the Civil Law Ordinance (Cap. 24)" [1957] M.L.J. xxxvi; R.H. Hickling, "Civil Law (Amendment No. 2) Act, 1979 (No. 24) — Section 5 of the Civil Law Act: Snark or Boojum?" (1979) 21 Mal. L.R. 351; and "Sorting Out The Headaches of Singapore's Commercial Law" *Straits Times,* 5 October 1979.

2 Cap. 30, Singapore Statutes, Rev. Ed. 1970, since amended by Civil Law (Amendment No. 2) Act 1979 (No. 24).

3 United Kingdom Statute 56 & 57 Vict. c. 71, since repealed and reenacted in consolidated form as the Sale of Goods Act 1979, c. 54. The 1893 Act is the applicable Act as the decision here was rendered in July 1979 whilst the 1979 Act takes effect only from 1 January 1980. For a comment on the new 1979 Act, see W.J.M. Ricquier, "United Kingdom Sale of Goods Act 1979 And Its Applicability in Singapore" (1980) 22 Mal. L.R. 145.

4 See Hickling, *supra.*, n. 1 at 357. See also Myint Soe, *The General Principles of Singapore Law* (1978) 396-426.

5 The Supply of Goods (Implied Terms) Act, 1973 (c. 13) did not amend the text of s. 15 although it did in some way affect the operation of s. 15. It attacked clauses aimed at excluding liability under terms implied by the Sale of Goods Act which included those implied under s. 15 in sales by sample. See generally, S.J. Bishop, "Supply of Goods (Implied Terms) Act 1973 — A Commentary" N.L.J. Vol. 123 at 529 (1973); C.J.L. Ryan, "Supply of Goods (Implied Terms) Act 1973" S.J. Vol. 117 at 363 (1973); and David Yates, "The Supply of Goods (Implied Terms) Act 1973" J.B.L. 135 (April 1973).

6 See generally, P.S. Atiyah, *The Sale of Goods* (5th Ed.), Chapter 12, especially at 102-104. See also, D.W. Greig, *Sale of Goods* (1974), Chapter 5 especially at 202-206.

7 S.15(2)(a) Sale of Goods Act, 1893.

8 S.15(2)(b) Sale of Goods Act, 1893.

9 S.15(2)(c) Sale of Goods Act, 1893.

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11 One naturally wonders whether the statute was at all raised in argument by counsel on either side for it seems inexplicable that the Court should ignore the statute which governs the transaction before it.

12 It has been said that the test of a sale by sample is a question of law. See Greig, *supra.,* n. 6.

decision would at least be based on prevailing common law principles on sale by sample. This, however, is not apparent in the grounds of decision.[13] Be that as it may, the Court seemed to have been aware — perhaps by deduction from first principles? — that the buyer had a right[14] to expect the goods to correspond with the sample in quality. It made a finding of fact that "all the dresses delivered not only do not correspond with the sample provided, but are of an inferior quality."[15] It is clear from this finding of fact (although it is not articulated in the judgment) that the defendant seller breached a condition of the contract as implied by section 15(2)(a), had the Court cared to rely on the Sale of Goods Act. The legal consequences of such a breach are equally clear — the buyer has the right to reject the goods and sue for damages for breach. However, it is less clear whether, in making the finding that the dresses were of an "inferior quality", the Court was alluding to yet another condition implied by the Act: the condition of "merchantable quality" in section 15(2)(c). Since section 15(2)(c) contemplates a situation where there are defects in the goods not discoverable on reasonable examination (even though the bulk may in fact correspond perfectly with the sample),[16] and the buyer's complaint was that "the dresses delivered differed materially from the sample supplied" (and patently so), it may be supposed that the reference to "inferior quality" was not to equate it with the breach of a term implied by section 15(2)(c) (if the statutory provision was in the contemplation of the Court at all). But why are we left to speculate?

What of the condition implied by section 15(2)(b): the buyer's right to expect a reasonable opportunity of comparing the bulk with the sample? The Court found as a fact that as the original sample had remained in Jeddah with the buyer's customer, he had no reasonable opportunity for inspection before acceptance of delivery. As have been pointed out, section 15(2)(c) is "in effect a special instance of the general right of examination conferred by section 34."[17] Its importance, in this case, is of course in relation to the concept of "acceptance" as provided in section 35[18] of the Act? What section 15(2)(c) does, as does section 34, is to ensure that the buyer is not deemed to have 'accepted' the goods until he has had an opportunity of examining them, notwithstanding the facts which fall within the 3 situations contemplated by section 35. Thus, section 15(2)(c) is often invoked, not so much as a condition, the breach of which would

[13] *Supra.,* n. 10, a perusal of which will disclose no reference to any common law principles or Court decisions.

[14] No attempt was made by the Court to indicate whether such right was reposed in a "condition" or a "warranty" of the contract: a distinction entailing different legal consequences in the event of breach and entrenched in the statute. See s. 11 as well as the definition of "warranty" in s. 62(1), Sale of Goods Act, 1893.

[15] Grounds of decision, *supra.,* n. 13 at 3.

[16] Atiyah, *supra.,* n. 6 at 103.

[17] *Ibid.*

[18] S. 35 reads: "The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them (or except where s. 34 of this Act otherwise provides) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."

entitle the buyer to reject the goods and sue for damages, but rather as a device for holding the operation of section 35 at bay. This is necessary when the buyer wants to reject the goods (apart from suing for damages), as the effect of an 'acceptance' prevents the buyer from rejecting the goods for breach of condition, leaving him to his right to claim damages.[19]

In the instant case, the buyer, notwithstanding the fact that he had "no opportunity" to inspect the goods, clearly accepted them by concluding his sale with a sub-buyer, his Jeddah customer. Nor was there any attempt by the buyer to seek any remedy other than damages as consistent with section 11(l)(c).[20] That having been the case, and it having already been ruled (impliedly) that the seller was in breach of the condition (that the bulk shall correspond to the sample) as alleged by the buyer, it is unclear to what end the Court discussed the question of reasonable opportunity of examination. Further, the Court held that "the first opportunity for comparison arose only when the dresses arrived in Saudi Arabia"[21] and that the buyer's brother (PW2), who was in Jeddah "compared sample No. 1912 with the dresses supplied and was satisfied that the goods supplied were materially different from sample No. 1912."[22] The sum of these two findings of fact can only be that *there had been a reasonable opportunity for examination by the buyer,* in Jeddah, if not in Singapore. Thereafter, the buyer still concluded his deal with the sub-buyer, his Jeddah customer. As such, the goods *had been examined and accepted* in Jeddah. The question of reasonable opportunity of examination, it would appear, is not really an issue and the Court's ruling that the buyer had no reasonable opportunity for examination of the goods before acceptance is patently inconsistent with the other findings of fact.

Finally, the Court ruled that there had been a breach of contract, whether a section 15(2)(a)-breach or a section 15(2)(b)-breach we are not told. We are only left to wonder as to the legal basis of the Court's decision and to applaud its ability to render a decision without any recourse to statute or judicial authority!

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[19] See s. 11(l)(c), Sale of Goods Act, 1893 which is consistent with the general contractual principle that once a breach of condition has been affirmed, an injured party has lost his right to repudiate the contract and must be content with damages. See generally Furmston, Cheshire and Fifoot's *Law of Contract,* (9th Ed.) at 135-144.

[20] *Ibid.*

[21] Grounds of Decision, *supra.,* n. 10 at 3.

[22] Grounds of Decision, *supra.,* n. 10 at 2.