

National Foods Ltd v Pars Ram Brothers (Pte) Ltd
[2006] SGHC 173

Case Number : Suit 457/2005

Decision Date : 29 September 2006

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Lai Swee Fung and Chia Cheok Sien (UniLegal LLC) for the plaintiff; Palaniappan Sundararaj and Choo Ching Yeow Collin (Straits Law Practice LLC) for the defendant

Parties : National Foods Ltd — Pars Ram Brothers (Pte) Ltd

Contract – Implied terms – Contract for sale of ginger slices for export to Pakistan – Whether goods of satisfactory quality and reasonably fit for purpose for which goods were bought – Whether implied conditions of contract under Sale of Goods Act breached – Sections 14(2), 14(3) Sale of Goods Act (Cap 393, 1999 Rev Ed)

Commercial Transactions – Sale of goods – International sale contracts – Contract for sale of ginger slices for export to Pakistan – Whether Sale of Food Act and Food Regulations applicable where sale of food products under contract not for sale in Singapore – Foods Regulations (Cap 283, Rg 1, 2005 Rev Ed), Sale of Food Act (Cap 283, 2002 Rev Ed)

29 September 2006

Judgment reserved.

Kan Ting Chiu J:

1 The two parties in this action are established commercial enterprises. The plaintiff, National Foods Limited, is a company incorporated in Pakistan, and the defendant, Pars Ram Brothers (Pte) Ltd, is incorporated in Singapore.

2 The defendant carries on business as traders in natural produce such as cloves, cumin seeds and ginger. The plaintiff carries on business in the trading, manufacture, packing and sale of food items and products.

3 The action between the parties arose out of four lots of dried Chinese-origin ginger slices the plaintiff bought from the defendant. The ginger was bought under four agreements which were governed by the laws of Singapore. Each agreement was evidenced in a contract issued by the defendant to the plaintiff. The particulars of the four contracts were:

<u>Agreement</u>	<u>Date</u>	<u>Quantity</u> <u>(MT)</u>	<u>Price CNF Karachi</u> <u>(US\$)</u>
First	4/8/2004	17.71	33,649
Second	5/8/2004	17.57	32,943.75
Third	13/8/2004	35.42	66,412.50

4 The defendant was obliged to produce certificates of origin, phytosanitary certificates, fumigation certificates and a certificate that the goods were free from aflatoxins and salmonella, together with other documents.

5 The plaintiff alleged that it had made known to the defendant, or the defendant was aware that the ginger was purchased by the plaintiff for the purpose of its business in the trading, manufacture, packing and sale of food items and products^[note: 1] and in these premises, there was an implied condition that the ginger was reasonably fit for those purposes or for human consumption.^[note: 2] After the dispute with the defendant arose, the plaintiff informed a laboratory to which the ginger slices were sent for testing that the ginger slices were not intended for direct consumption, but were to be "converted into powder form first (if found fit for consumption) then it will be mix *[sic]* in recipes and use *[sic]* as ginger powder".^[note: 3]

6 In making its claims, the plaintiff relied on the following statutory provisions:

(a) Section 13 of the Sale of Food Act (Cap 283, 2002 Rev Ed) ("SFA"):

No person shall sell any food containing a greater proportion of any substance than is permitted by any regulations made under this Act.

read with reg 227 of the Food Regulations (Cap 283, Rg 1, 2005 Rev Ed) made under the SFA:

Ginger shall be the washed and dried or the decorticated and dried rhizome of *Zingiber officinale* and shall be free from damage by pests. It may contain sulphur dioxide as a preservative and shall contain —

- (a) not less than 4.5% alcohol (90%) soluble extract;
- (b) not more than 7% total ash;
- (c) not less than 1.7% water soluble ash;
- (d) not less than 10% cold water soluble extract; and
- (e) not more than 1% lime as calcium oxide.

(b) Sections 14(2), 14(2A) and 14(2B) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("SGA"):

14 (2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality.

(2A) For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.

(2B) For the purposes of this Act, the quality of goods includes their state and condition

and the following (among others) are in appropriate cases aspects of the quality of goods:

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied;
- (b) appearance and finish;
- (c) freedom from minor defects;
- (d) safety; and
- (e) durability.

(c) Section 14(3) of the SGA:

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.

7 In the re-amended statement of claim, the particulars of the defects of the ginger were given as:

- a) The goods had ash content and other extraneous matters, e.g. arsenic, lead, mercury, copper present in it;
- b) The goods, namely, dry ginger slices had a high moisture content;
- c) The goods had or had excessive fungal growth;
- d) The goods were very dirty and the dirt could not be washed off or washed off adequately so as to be used;
- e) The goods had dusts [*sic*]/dirt trapped in the contours of the ginger slices; and
- f) Generally, the goods were of such a bad state that it was not reasonably fit for use as a food item.[\[note: 4\]](#)

8 Having identified those defects, the case the plaintiff presented was focused on the ash content. The plaintiff relied on the test results showing that the ginger slices had an ash content in excess of the 7% prescribed in the Food Regulations, and treated that as proof that the ginger slices were not of satisfactory quality and were not reasonably fit for the purpose for which they were bought.

9 In its closing submissions, the plaintiff stated:

The crux of the Plaintiffs' grievance is that upon the arrival of the Goods in Pakistan, the Plaintiffs discovered that they were defective. Initially, the Plaintiffs complained that they were dirty, dusty, mouldy and contaminated with fungal growth. Subsequent tests conducted on the Plaintiffs' instructions revealed a far bigger problem: that the Goods had ash content of between 14 and 20%, far in excess of the maximum level of 7% permitted under the relevant Singapore and Pakistan legislation. In the opinion of the Pakistan Council of Scientific & Industrial Research ("PCSIR") ... one of the external laboratories engaged by the Plaintiffs to conduct tests on specimens of the Goods, the Goods were unfit for human consumption.[\[note: 5\]](#)

10 The ash content was the complaint that was fully addressed at the trial. The other alleged defects did not receive the same level of attention, and there was no evidence adduced to show that those alleged defects were so severe that the ginger slices were of unsatisfactory quality or were not reasonably fit for the purpose for which they were bought. In the closing submissions, the other alleged defects were not referred to.

The defences

11 The defences pleaded in the amended defence are:

- (a) The sales were by sample.[\[note: 6\]](#)
- (b) The purpose for which the ginger slices were purchased was not made known to it by the plaintiff.[\[note: 7\]](#)
- (c) The SFA and Food Regulations do not apply to the sale of the ginger slices.[\[note: 8\]](#)

(Paragraph 12A(ii) of the amended defence was that:

The laws of Singapore relating to such goods, namely the Sale of Food Act (Chapter 283) and the Food Regulations did [not] apply to the sale of the Goods to the Plaintiffs under the four contracts as the Goods [were] not intended for sale in Singapore.

The words in square brackets are inserted by me to reflect the defendant's position, which was made clear in the defendant's closing submissions and reply submissions.)

(d) Any claims in respect of the first and second shipments were extinguished by the settlement agreement of 24 September 2004.[\[note: 9\]](#)

(e) The plaintiff had accepted the four shipments of ginger slices.[\[note: 10\]](#)

12 The defendant raised additional issues in its closing submissions, without seeking leave to incorporate them into its defence. These unpleaded defences will not be considered in my review of the case.

13 I will examine the case under the following headings:

- (a) whether the sales were by sample;
- (b) the significance of the ash content test results;

- (c) the effect of ss 14(2) and 14(3) of the SGA;
- (d) whether the SFA and the Food Regulations apply to the sales;
- (e) the effect of the settlement agreement of 24 September 2004; and
- (f) whether the ginger slices were accepted by the plaintiff.

Whether the sales were by sample

14 The defendant in its defence pleaded that the four sales were by sample. This was clearly contradicted in so far as the first contract was concerned by the documents which showed that the order was placed and accepted before the sample was sent and received. There was no indication that the subsequent contracts were made on a basis different from the first contract.

15 It is also noteworthy that it was not mentioned in the agreements or correspondence contemporaneous to the agreements and the correspondence following the delivery that the sales were by sample. The defendant's managing director and principal witness, Kirpal Ram s/o Ishwa Dass, who is known as K R Sharma ("Sharma"), did not say in his affidavit of evidence-in-chief that the sales were by sample.

16 On the evidence, I found that the sales were not by sample. In any event, the defendant did not produce the sample or give particulars of its qualities to support the implied assertion that the ginger delivered conformed with the alleged sample.

The significance of the ash content test results

17 The plaintiff's complaint was that when the ginger the defendant supplied was sent for examination it was shown to have a higher ash content than was allowed by reg 227 of the Food Regulations.

18 Regulation 227 appears in the part of the Food Regulations under the heading "Spices and Condiments" which covers regs 213 to 236. Regulations 213 and 227 read:

213. Spices and condiments shall be sound, aromatic vegetable substances used for flavouring of food, from which no portion of any oil or other flavouring substance, naturally contained in them, has been removed. The standard specified for the various spices shall apply to spices whether whole, partly ground or in powder form.

227. Ginger shall be the washed and dried or the decorticated and dried rhizome of *Zingiber officinale* and shall be free from damage by pests. It may contain sulphur dioxide as a preservative and shall contain —

- (a) not less than 4.5% alcohol (90%) soluble extract;
- (b) not more than 7% total ash;
- (c) not less than 1.7% water soluble ash;
- (d) not less than 10% cold water soluble extract; and

(e) not more than 1% lime as calcium oxide.

19 Regulation 213 is the general provision which is to be read with each of the subsequent provisions which name specific spices and condiments and set out the standards for them. Regulations 213 and 227 must be read together so that ginger sold as a spice or condiment must comply with the standards set out in reg 227. When ginger is sold for other purposes, reg 227 does not apply. This construction is consistent with the intent of the regulations to ensure that spices and condiments sold are safe for consumption. If the regulation is read to apply to ginger sold for every purpose, we would arrive at the absurd position that fresh ginger cannot be sold because it is not dried as required by reg 227.

20 The dried ginger slices sold were not sold as a spice or condiment, but had to be processed before being used for the flavouring of food. The plaintiff's general manager, Syed Maroof Hasan Wasti ("Wasti"), confirmed that the ginger was to be converted to powder before use, although he was unable to say whether the ginger would also undergo a cleaning process.[\[note: 11\]](#)

21 The plaintiff relied on the test result on the ginger powder from the ginger supplied under the first and second contracts undertaken by the Pakistan Council of Scientific and Industrial Research ("PCSIR") which showed an ash content of 14.34% for the powdered ginger and an ash content of 19.02% for the ginger slices. Those test results would support a complaint that the ginger slices did not conform to reg 227 if the ginger slices were sold as a spice or condiment. However, as the ginger slices were not sold as a spice or condiment, they did not have to comply with reg 227, and the impact of the test results is diminished.

The effect of sections 14(2) and 14(3) of the Sale of Goods Act

22 The plaintiff had pleaded that the defendant had breached ss 14(2) and 14(3) of the SGA. Section 14(2) is a general provision that when a seller sells goods in the course of business, it is implied that the goods sold are of a satisfactory quality. Section 14(3) applies in situations where the buyer makes known to the seller expressly or impliedly, the purpose for which the goods are purchased. In such a situation, it is implied that the goods sold are reasonably fit for that purpose.

23 Applying s 14(2) to the facts, there is an implied condition that the ginger was of a satisfactory quality. Section 14(2A) states that the ginger could be considered to be of satisfactory quality if it meets with the standard of a reasonable person, taking into account the description of the ginger, the price and other relevant circumstances.

24 The contracts of sale described the ginger simply as dried ginger slices of Chinese origin. There was no description of the state of the dried ginger slices. Ginger slices can be in various states, eg, washed, unwashed, or bleached. As the contracts did not specify that the ginger slices were washed, the plaintiff cannot complain if the ginger slices delivered were not washed, and needed to be washed before they could be used.

25 There was no evidence adduced as to what a reasonable person would regard to be the satisfactory quality of such ginger against this backdrop. Under s 14(2), the test is not whether the buyer found the ginger to be of satisfactory quality; but whether a reasonable person would have found it to be unsatisfactory. The reasonable person for this purpose is not to be the man in the street with no knowledge or experience in buying dried ginger slices in bulk, but he could be a producer, a trader or an end-user of dried ginger slices.

26 It was for the plaintiff to show that such a person would have found the ginger to be of

unsatisfactory quality. The plaintiff could have adduced evidence from someone from a relevant trade body, a producer of dried ginger slices, a trader who buys or sells dried ginger slices, or someone with knowledge of ginger slices and experience in buying them, who is in a position to say whether the ginger slices the defendant sold were of satisfactory quality. Without such evidence, the plaintiff has not discharged the onus of proving that the ginger slices were not of satisfactory quality under s 14(2).

27 The plaintiff relied on the test results of its own laboratory as well as the laboratories and those of the PSB Corporation of Singapore. The defendant disputed the reliability of these results by raising questions over the manner in which the test samples had been selected and the delay in having the tests done.

28 The test results showed high ash content, and high micro-bacteriological level. The PCSIR in a report dated 3 December 2004 went further to state that the ginger was unfit for human consumption, and this was elaborated upon in a letter from PCSIR dated 24 September 2005 that the "conclusion that the sample was unfit for human consumption is based on national & International standards" of which only the Pakistan Pure Food Laws were identified. That letter was a reply to Wasti's query on PCSIR's conclusion that the sample was unfit for human consumption[[note: 12](#)] after the defendant produced an expert opinion[[note: 13](#)] that "ash content of up to 30% in dried ginger slices does not make the ginger slices unfit for human consumption" without giving any explanation or citing any basis or authority. This bare opinion is of no evidential value because it did not comply with O 40A rr 3(2)(b) and 3(2)(c) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), and because the purported expert admitted in cross-examination that he is not an expert in food safety.

29 The plaintiff should not be relying on the Pakistani legislation because it was common ground that the sales were governed by Singapore law. However, as the Pakistani regulation relating to ash content is similar to reg 227 of the Food Regulations, the point is covered by reg 227.

30 However the difficulty is that the Food Regulations only prescribe the 7% limit for ginger sold as a spice or condiment and do not set any standard for ash content for ginger that is not sold as a spice or condiment. Consequently, it does not follow that for ginger slices which are not sold as a spice or condiment, an ash content exceeding 7% also renders the ginger to be of unsatisfactory quality. This does not mean that ash content has no bearing on the question of satisfactory quality, but it means that the appropriate level has to be established.

31 The PCSIR report did not identify the national and international standards beyond the Pakistan Pure Foods Laws. Even if the report had identified those standards, the plaintiff still has to establish that the standards applied to ginger slices that were not sold as a spice or condiment but which were intended to be cleaned, processed, powderised and used as ginger powder in food products. In the absence of proof of the standards, the plaintiff has failed to show that the ginger slices were not of satisfactory quality.

32 On the application of s 14(3), the plaintiff accepted that it had not informed the defendant of the purpose for which it bought the ginger slices. However it submitted that the defendant should have known that the ginger slices were intended to be used in the plaintiff's food products because ginger is commonly used in the preparation of food, the plaintiff's name indicated that it was in the food industry, and the requirement that the ginger slices be free from aflatoxins and salmonella constituted implied notification that the ginger slices were to be used in food products.

33 Lord Wilberforce explained in *Henry Kendall & Sons v William Lillico & Sons Ltd* [1969] 2 AC 31 at 123 that "particular purpose" means a specified or stated purpose rather than a special purpose.

This means that when a general purpose is made known the implied condition of suitability would relate to the general purpose rather than any undeclared special purpose. For example, if a person buys a watch without stating that he intends to use it for deep-sea diving, the implied condition will be that the watch will function properly during ordinary use, but not that it is suitable for use as a diver's watch.

34 Sharma in his evidence alluded that ginger slices could also be used in food as well as medicinal products. However, on an examination of the evidence, I find that the defendant was more likely to have understood that the ginger slices were bought by the plaintiff for use in food products than for medicinal or other purposes.

35 The onus is on the plaintiff to show that the ginger slices were not reasonably fit for the general purpose of being used in food products. The plaintiff has to show that the ash content rendered the ginger slices unsuitable for use in food products. The test results on the ash content do not show that the ginger slices were not suitable for use in food products. The plaintiff has therefore not discharged the onus.

Whether the Sale of Food Act or the Food Regulations apply to the sales

36 The defendant argued that:

[T]he Sale of Food Act is limited in its application to food sold for use in Singapore and does not apply to food sold for use in a foreign country. [\[note: 14\]](#)

37 There is no basis for this argument. "Sale" and "sell" is defined in s 2 of the SFA to include:

barter and exchange, and also includes offering or attempting to sell, or causing or allowing to be sold, or exposing for sale, or receiving or sending or delivering for sale, or supplying any food where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for, or having in possession for sale, or having in possession any food or appliance knowing that the same is likely to be sold or offered or exposed for sale, and refers only to sale for human consumption or use.

38 The defendant made the sales from its office in Singapore. The parties agreed that the four sales were governed by the laws of Singapore. The defendant's contention was that "sell" in s 13 of the SFA should be read to exclude export sales from Singapore.

39 There is no justification for such a restricted construction. If the Legislature had intended that the standards set out in the Food Regulations are to apply only to food sold for use in Singapore, it could have made that express and clear. When that is not done, no such restriction should be applied.

The effect of the settlement agreement of 24 September 2004

40 The ginger under the first and second contracts was received by the plaintiff on 12 September 2004. The plaintiff claimed that when the ginger was inspected it was found to be heavily contaminated with mould and it gave notice of that to the defendant on 14 September 2004. In an e-mail sent on 23 September the plaintiff identified three issues with the ginger, *ie*, mould count, moisture level and dirt or dust. At the trial, Wasti and Deputy General Manager Sohail Ahmed [\[note: 15\]](#) confirmed that there were no issues with moisture or mould for the ginger delivered under the third and fourth contracts.

41 The defendant had expressed surprise over the complaint and asserted that the moisture level of the ginger was within the agreed limit. Nevertheless, Wasti met with Sharma in the latter's office on 24 September 2004. They arrived at an agreement in respect of the ginger delivered under the first and second contracts. The agreement was set out in writing stating that:

It has been hereby agreed between our Mr K.R. Sharma and Mr SMH Wasti the compensation of **USD5,000.00** in full and final settlement for the fungus, mould goods and being cost to reclean the material by dehydrating it.

and Wasti signed on the document to confirm receipt of the compensation.

42 What is the effect of this settlement? First, there is an implied admission that there was fungus, mould and dirt in the ginger. Second, that those complaints have been resolved by the payment of the US\$5,000.

43 However, the plaintiff pleaded in its reply that:

It was an implied term of the Defendants' receipt of payment of the said sum of US\$5,000.00 that the goods shipped pursuant to the [first and second contracts] would be rendered fit for human consumption and/or for the purpose of the Plaintiffs' business in the trading, manufacture, packing and sale of food items and products after the dehydration and cleaning process.

Despite washing, dehydrating and cleaning, the goods under the first 2 shipments were still not fit for human consumption and/or for the purpose of the Plaintiffs' business in the trading, manufacture, packing and sale of food items and products.

44 Is such an implied term justified on the ground of business efficacy or on any other ground? If Wasti or the plaintiff had accepted the payment on those terms, why was it not expressed in the agreement? Why should the defendant be faced with the term that was not discussed or agreed to? The plaintiff did not address these questions. I cannot find any basis for implying such a term to the settlement agreement.

45 However, the settlement was restricted to the complaints of fungus, mould and dirt that were specified and did not extend to any other defects of the ginger that were not specified. Of the six defects particularised by the plaintiff and set out in [7] hereof, complaint (a) over the ash content would fall outside the settlement while complaints (b), (c), (d) and (e) come within the settlement. Complaint (f) is not a proper complaint at all, as "bad state" does not indicate any additional or specific deficiency or defect.

46 I therefore find that the settlement agreement estopped the plaintiff from making any claims in respect of the ginger supplied under the first and second contracts, but the settlement did not extend over excessive ash content levels.

Whether the ginger slices were accepted by the plaintiff

47 Beside asserting in its amended defence that the plaintiff had accepted the goods and altered the nature of the goods, the defendant did very little to substantiate or develop this contention. The only evidence adduced was Sharma's assertion in his affidavit of evidence-in-chief that "[t]he Plaintiffs accepted all four shipments of goods and altered the nature of the goods by cleaning[,] washing and dehydrating the Goods". The defendant made no reference to this defence or to Sharma's assertion in its opening statement. In its closing submissions where 12 issues were

identified and addressed, the defence of acceptance was not referred to at all.

48 On the other hand, the plaintiff in its closing submissions refuted the allegation that ginger slices has been accepted and pointed out that Sharma had conceded that the plaintiff has rejected the ginger slices.[\[note: 16\]](#) The defendant did not respond to this in its submissions in reply.

49 In any event, the evidence was clear that the plaintiff has complained about the quality of the ginger slices at all times, and has not accepted them and cannot be deemed to have accepted them under s 35 of the SGA.

Conclusion

50 The plaintiff has serious concerns over the quality of the ginger slices that the defendant supplied. It claims that the defendant is in breach of the conditions implied by ss 14(2) and 14(3) of the SGA.

51 When a claim is made under those provisions, the claimant must do more than show that there are defects with the goods. The claimant has also to show that the defects rendered the goods to be of unsatisfactory quality, or unsuitable for the purpose for which they are purchased.

52 As the plaintiff has not established that the ginger slices were of unsatisfactory quality or were unsuitable for use in food products, its claims are dismissed.

[\[note: 1\]](#) Re-amended statement of claim para 8

[\[note: 2\]](#) Re-amended statement of claim para 9

[\[note: 3\]](#) AB440

[\[note: 4\]](#) Re-amended statement of claim para 11

[\[note: 5\]](#) At para 7.

[\[note: 6\]](#) Amended defence para 7.1

[\[note: 7\]](#) Amended defence para 8

[\[note: 8\]](#) Amended defence para 12A(ii).

[\[note: 9\]](#) Amended defence para 14

[\[note: 10\]](#) Amended defence para 18

[\[note: 11\]](#) Notes of evidence, 15 May 2006, pp 30–31

[\[note: 12\]](#) Affidavit of evidence-in-chief of Wasti exh "SMHW-48"

[\[note: 13\]](#) AB483

[\[note: 14\]](#) Defendant's Closing Submissions para 12

[\[note: 15\]](#)Notes of evidence, 15 May 2006, pp 81 and 134

[\[note: 16\]](#)Plaintiff's closing submissions paras 37–46

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