IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 284

High Court/Suit No 152 of 2015

Between

HG Metal Manufacturing Limited

… *Plaintiff*

And

1. Gayathri Steels Pte Ltd
2. Vashiharan Navaratnam
3. Sherine Sangeetha Navaratnam

… *Defendants*

A N D

Between

Gayathri Steels Pte Ltd

… *Plaintiff-in-Counterclaim*

And

HG Metal Manufacturing Limited

… *Defendant-in-Counterclaim*

JUDGMENT

[Credit and security] – [Guarantees and indemnities] – [Guarantor]
[Sale of goods] – [Breach of contract]

HG Metal Manufacturing Ltd
v
Gayathri Steels Pte Ltd and others

[2017] SGHC 284

High Court — HC/Suit No 152 of 2015
Choo Han Teck J
26–29 September, 3–6 October; 6 November 2017

9 November 2017 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a company in the business of supplying steel, and the first defendant was one of its customers. The second and third defendants (who are husband and wife) are guarantors of the trade debts owed by the first defendant to the plaintiff. The first defendant is also in the business of selling steel.

2 The plaintiff's claim in this action is for S$411,647.21 and US$998,763.03. It claims these sums (together with interest and costs) being unpaid money for steel supplied to the order of the first defendant and guaranteed by the second and third defendants who are both directors of the first defendant. The first defendant counterclaims against the plaintiff for damages for breach of contract.

3 There is no dispute that the first defendant had been a customer of the plaintiff from 1999. The second defendant says that the plaintiff has been the first defendant's main supplier of steel. By May 2013, the first defendant owed the plaintiff US$874,294.50 and S$264,714.16 for steel supplied, with more than half of that having been outstanding for at least three months. The plaintiff therefore took steps to help manage the repayment of those outstanding debts. The parties discussed various options. By 21 February 2014, various draft credit agreements were prepared.

4 No clear agreement was reached and none of the draft credit agreements were signed. Throughout the negotiation period, the first defendant made several promises to pay even though it did not keep up with the actual payments. Despite this, the first defendant claims that the parties had reached an agreement on 21 February 2014.

5 The first defendant puts forward a defence that is so unreasonable that it cannot be accepted. I will set out the defence as summarised by the first defendant's counsel in his closing submission. Counsel submitted:

> a. The Defendants are not liable to the Plaintiff for the unpaid steel supplied by the Plaintiff as of 31 July 2014, because:
>
> i. The Plaintiff had restructured the 1st Defendant's payment obligations for set of invoices classified as the MB Account by virtue of a Profit Sharing Agreement that came into existence around the 16th of January 2014.
>
> ii. The Plaintiff had terminated the agreement by conduct or breached a term when it refused to continue supplies under the profit sharing agreement. Discontinuing supplies discharged the 1st Defendant of its obligation to pay any amounts classified under the MB account; and

iii. the Plaintiff is liable to the 1st Defendant for damages flowing from its refusal to supply materials to the 1st Defendant under the "Profit Sharing Agreement".

b. In the alternative to (a) above, the Plaintiff is estopped from pursuing the payments from the 1st Defendant, because:

i. The Plaintiff represented to the 1st Defendants that it would restructure the 1st Defendant's payment obligations, and the 1st Defendant acted to its detriment in reliance of this representation; or

ii. It would be unreasonable for the Plaintiff to demand immediate payment in light of the long-standing course of dealing between the Plaintiff and Defendant.

…

Given the undisputed fact that the plaintiff had been selling and supplying steel to the first defendant as vendor and purchaser, and the fact that at least up to 16 January 2014 there were money due from the first defendant to the plaintiff by reason of the first defendant not paying its bills on time, the first defendant's defence implies that the plaintiff was willing to forgo its unbridled strength as an unpaid vendor by "re-structuring" the first defendant's debts such that the first defendant is absolved from paying the due debts, and furthermore, will henceforth share its profits with the plaintiff without having to disclose who the first defendant's customers might be.

6 The first defendant further claims that the plaintiff failed to continue the supply of steel to the first defendant and that is tantamount to a discharge of the first defendant's obligations to pay for steel previously ordered and delivered but remaining unpaid. Furthermore, the first defendant claims that the plaintiff's

failure to supply steel was tantamount to a breach of their Profit Sharing Agreement for which it now claims damages by way of its counterclaim.

7 In contrast, the documentary evidence of monthly statements and email correspondence supports the plaintiff's case that the first defendant had been behind in payment for too long, and when the plaintiff decided to tighten its credit control, the parties negotiated for a suitable scheme. In the course of the negotiations, it was suggested that the first defendant would authorise its customers to pay directly to the plaintiff for steel that were sold to the first defendant by the plaintiff.

8 That scheme could not work because the first defendant declined to let the plaintiff know who its customers were. More negotiations led to various drafts of a credit agreement, designed to formalise the credit control of steel sold to the first defendant.

9 The first defendant's defence rests entirely on the Credit Agreement of 21 February 2014 but the said agreement was not signed because the long drawn negotiations led to no agreement. The parties could not agree on essential and central terms of the said agreement. The last email in the negotiations ended with the first defendant's email stating why it would not sign the Credit Agreement. The email went unanswered as the parties obviously reached an impasse. That being so, the first defendant stands without a defence on the debts as evidence at trial. The parties were left where they started — the plaintiff demanding payment for steel supplied.

10 The first defendant's counterclaim in so far as it rides on the existence of the Credit Agreement must therefore fail as well. The first defendant

obviously cannot sell steel if it is unable to persuade its supplier (the plaintiff) to extend credit. No commercial law requires the plaintiff to be bound to losses incurred by the first defendant in such circumstances.

11 The first defendant's defence on estoppel similarly has no merits. It is unable to identify any statement that carries a promise not to sue for payment. Gratuitous indulgences in themselves do not amount to an actionable estoppel. This action is a straight-forward demand for payment of goods sold and delivered by a long suffering supplier to the first defendant.

12 For the reasons above, I am allowing the Plaintiff's claim against the first defendant for the sums of S$411,647.21 and US$998,763.03 ("the Outstanding Sums") for the outstanding amount of unpaid goods with interest pursuant to s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed).

13 The Plaintiff is claiming against the second and third defendants for the Outstanding Sums under a Letter of Guarantee dated 24 July 2013 ("the July Guarantee"). The second and third defendants alleged that the Letter of Guarantee is invalid because they were unduly pressured into signing it or that there were false representations made to them. I do not find it necessary to consider these allegations. Contrary to the submissions by counsel for the Plaintiff, I find that the July Guarantee had been superseded by the later guarantee dated 24 September 2013 ("the September Guarantee"). Under cross-examination, the senior manager of the Plaintiff disagreed that the September Guarantee supersedes the July guarantee and went on to explain that the September Guarantee was "drafted specifically such that it would cover old and new debts". She then stated that the July Guarantee was also meant to "[cover] old and new debts". This led the lawyer to question the distinction between the

two guarantees, to which she answered "[t]he [September Guarantee] is worded more professionally. It was drafted by a lawyer….I do not know who drafted the [July Guarantee]". Indeed, both the July and September Guarantees covered all sums payable by the first defendant for orders made from the Plaintiff. But the difference highlighted by the senior manager was not the only difference between the two guarantees. Significantly, the July Guarantee imposes a compound interest of 2% per month for late payment but the September Guarantee does not. The September Guarantee also contains an arbitration agreement. There cannot be two sets of rules applying to the liabilities of the second and third defendants in relation to the same debt. The Plaintiff clearly intended the September Guarantee to supersede the July Guarantee and the second and third defendants understood it as such. The second and third defendants tried to rely on the arbitration agreement in the September Guarantee. But their objection to the matter being litigated was not pleaded and no application for a stay of proceedings in favour of arbitration was taken out. In fact, the second and third defendants submitted to the jurisdiction of this court and participated in the trial.

14 Under the September Guarantee, the second and third defendants would have been jointly and severally liable for the Outstanding Sums. Although counsel for the Plaintiff submitted at trial that the Plaintiff is relying on both the July Guarantee and the September Guarantee, the Plaintiff specifically pleaded in its Reply that it is "not relying on the terms of the September Guarantee" in its Statement of Claim and chose to rely on the July Guarantee instead. Since that is the Plaintiff's claim, I am making no orders against the second and third defendants, having found the July Guarantee to have been superseded.

15 Costs to follow the event and be taxed if not agreed.

- Sgd -
Choo Han Teck
Judge

Sim Kwan Kiat, Mark Ortega and Zhao Jiawei (Rajah & Tann Singapore LLP) for the plaintiff and defendant-in-counterclaim
Pratap Kishan and Larisa Cheng (Ho Wong Law Practice LLC) for the defendants and plaintiff-in-counterclaim.