

Chai Cher Watt (trading as Chuang Aik Engineering Works) v SDL Technologies Pte Ltd
[2010] SGHC 348

Case Number : Suit No 439 of 2009
Decision Date : 29 November 2010
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Gopal Perumal (instructed) and Ms Tan Siew Gek Suzanne (K Ravi Law Corporation) for the plaintiff; Chooi Yue Wai Kenny, Kong Tai Wai David and Fong Kai Tong Kelvin (Yeo-Leong and Peh LLC) for the defendant.
Parties : Chai Cher Watt (trading as Chuang Aik Engineering Works) v SDL Technologies Pte Ltd

Contract

[LawNet Editorial Note: The appeal to this decision in Civil Appeals Nos 233 of 2010 and 10 of 2011 was allowed in part by the Court of Appeal on 17 October 2011. See [\[2011\] SGCA 54.](#)]

29 November 2010

Judgment reserved.

Philip Pillai J:

Introduction

1 The plaintiff, Chai Cher Watt, trading as Chuang Aik Engineering Works, brings this suit against the defendant, SDL Technologies Pte Ltd, for the refund of deposits paid under two contracts for the supply of a drilling machine ("Drilling Machine") and a lathe machine ("Lathe"), and for damages resulting from the breach of the two contracts.

Background facts

2 The plaintiff entered into the following written contracts with the defendant:

(a) a contract dated 21 August 2007 for the supply, delivery, installation and commissioning of one Deep Hole Boring and Drilling machine (Model Number: DB2125/4000) ("Drill Contract"); and

(b) a contract dated 21 December 2007 for the supply, delivery, installation and "power-up" of one Heavy Duty Conventional Lathe (Model Number: CW611800 X 2000) ("Lathe Contract").

3 The Drill Contract was the result of prior consultations between the defendant and the plaintiff in which the defendant advised him on the appropriate drilling machine which would meet his requirements. In this regard the plaintiff's requirements related to the drilling capacity of the Drilling Machine, to be installed and operated in his new factory site. The Drill Contract signed by both parties set out the technical description of the Drilling Machine and in particular, its drilling capacity of a maximum boring depth of 4000mm. It also set out the instalment payment of the purchase price of a

30% deposit upon confirmation, 50% payable upon inspection at manufacturer's plant before shipping to Singapore and the remaining 20% payable upon delivery and commissioning. Other relevant terms include that the customer is to "prepare floor base and foundation before the arrival of the machine" and for "1 people [sic] from customer will be provided round trip air ticket and 2 days accommodation for machine inspection/test run at manufacturer plant upon manufacturing completed [sic]".

4 The Drilling Machine was delivered on 19 August 2008 to the plaintiff at Block 3017A Ubi Road 1, #01-17 ("Factory") pursuant to the Drill Contract. The plaintiff thereafter rejected the Drilling Machine and sought repayment of the deposit paid under the Drill Contract on the basis of the defendant averred to be in repudiatory breach of the Drill Contract, by reason of the following: (1) the machine was not new but refurbished; (2) the machine was not 11m long as stated in the Drill Contract but was 13.5m long; (3) the model number was not DB2125/4000 as stated in the Drill Contract but TK2125A; (4) the defendant did not pay for the plaintiff's return trip to China to inspect the drill machine; and (5) the defendant failed to notify the plaintiff of the completion of the manufacture of the machine before arranging for shipment.

5 The principal terms of the Lathe Contract signed by both parties set out the technical description of the Lathe and in particular, instalment payment of the purchase price of 30% deposit upon confirmation, 60% after machine inspection at the manufacturer's plant before shipping to Singapore and the remaining 10% upon on-site commissioning at the plaintiff's workshop. It set out the Delivery Time to be "approx. 6 months manufacturing completed upon received of deposit". It also provided a 12 month warranty against manufacturing defects and 12 months local service and technical support by the defendant. The Lathe Contract contained a printed term which had been deleted and cancelled by hand on the same date as the Lathe Contract which provided for "1 person to be provided a round trip air ticket including 2 days' accommodation for machine inspection and buy-off at manufacturer plan upon on site acceptance".

6 The plaintiff claims that the defendant had been in repudiatory breach of the Lathe Contract because (1) the Lathe was not delivered to the plaintiff within 6 months from the payment of the plaintiff's payment of the 30% deposit (the Lathe machine arrived in Singapore on 8 September 2008, the Lathe Contract date being 21 December 2007), (2) the defendant did not give notice of completion of the Lathe, and did not arrange for the plaintiff to inspect the Lathe in China before its shipment to Singapore; and (3) the defendant failed to provide a 12 month warranty against manufacturing defects from date of installation and setup of the Lathe.

My decision

Drill contract

7 I first consider the issue of whether the plaintiff is entitled to reject the Drilling Machine. It is trite law that in order to repudiate the Drill Contract, it would be necessary for the plaintiff to establish that the defendant had breached a condition of the contract or breached a warranty the consequence of which was to deprive the plaintiff of substantially the whole benefit of the Drill Contract. Section 13(1) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("Sale of Goods Act") provides that where there is a contract for the sale of goods by description, there is an *implied condition* that the goods will correspond with the description.

8 The Drill Contract and the Lathe Contract insofar as they contain specifications are contracts of sale by description within the meaning of s 13 of the Sale of Goods Act: see *Chuan Hiap Seng (1979) Pte Ltd v Progress Manufacturing Pte Ltd* [1995] 1 SLR(R) 122. Where the contract contains a detailed description of the goods, minor discrepancies between the delivered goods and their

description may entitle the purchaser to reject the goods: *Arcos Ltd v E A Ronaasen & Son* [1933] AC 470 at 479. In certain cases, in the absence of detailed commercial description, goods having considerable discrepancy from their described characteristics would nevertheless fall within s 13(1): *Benjamin's Sale of Goods* (Sweet & Maxwell, 8th Ed, 2010) at para 11-019. Thus, where a contract for a new Singer car was made, it was not satisfied by the delivery of a second hand model: *Andrew Bros Ltd v Singer & Co Ltd* [1934] 1 KB 17. Also, a contract for a one-year-old second-hand reaping machine which had been used to cut only 50 acres, was held not to have been performed by a very old machine which had been mended: *Varley v Whipp* [1900] 1 QB 513.

9 The plaintiff claims that he was entitled to repudiate the Drill Contract as the Drilling Machine delivered was not new but refurbished. The plaintiff bears the burden of proving that the machine was not new but refurbished. His first expert, Mr Rajesh Moehamad from SGS Testing & Control Services Singapore Pte Ltd conducted an inspection and issued a report on 1 September 2008 which concluded as follows:

Visual inspection was carried out on the accessible areas of the presented machine and found them to be used but in refurbished condition at the time of our inspection. It was observed that even though some portion that appear to indicate worn characteristics (such as loose bearings, scratch marks, poor electrical wiring, dusty and worn out controller [*sic*], dirt in filter of hydraulic pump etc) which suggest that the machine as a whole may not qualify as brand new condition. Based on the above findings we report that machine presented for inspection was found to be in refurbished condition. It should also be highlighted that the model indicated on the manufacturer nameplate was "TK2125A" instead of "DB2125/4000.

10 The plaintiff appointed a second expert, Mr Liam Kok Chye from Matcor Technology & Services Pte Ltd about a year later, and he conducted an inspection and issued a report dated 5 October 2009 in which he concluded as follows:

The condition of the [Drilling Machine] examined was not consistent with that of a new machine. The relatively extensive wear and tear in many of the equipments/parts, and the covering of new paint over old paint and rusted areas, indicated that the machine had been subjected to previous appreciable usage, which was not associated with the quality testing alleged (of reportedly less than 50 hours). The machine was apparently comprised of various old and used equipments/parts which were partially refurbished and put together as a system.

(i) many of the parts and components revealed evidence of considerable wear and tear from previous usage. These included the bolts, screws, bearings, tool posts, control button, sight glass, aluminium rails, keyboards and electrical connectors/cables etc. (ii) two of the motor end covers revealed signs of repair over previous dent and deformation damages while the oil in the hydraulic motor appeared darkened/used and filled with deposits; (iii) many parts of the frame structures and chassis/panels beneath the new green paint coating revealed remnants of old paint coating and rust; (iv) the machine was coated only after many parts were assembled and installed which is generally not consistent with common industrial practice; (v) the keyboard panel and associated accessories of the Fanuc control unit appeared inconsistent, used and worn; (vi) although the manufacturing dates in the identification panels of some of the equipments appeared relatively recent, the authenticity of the data inscribed in the identification panels is dubious as the conditions of the machines/parts were not consistent with those of a new equipment. [\[note: 1\]](#)

Apart from the two experts who had carried out a purely visual inspection for wear and tear, [\[note: 2\]](#) the plaintiff adduced no further evidence to prove that the Drilling Machine was not new but

refurbished. Indeed, even on the evidence of his own expert, only 20% of the Drilling Machine appeared to look “not new”. [\[note: 3\]](#)

11 The defendant’s case is that the manufacturer Dezhou Delong (Group) Machine Tool Co Ltd was a leading Chinese machine and machine tool manufacturer in receipt of an ISO 9001-2000 Quality System Certificate for *inter alia*, the TK21/DB1/1A series of machines. In order to achieve the ISO certification, the manufacturer had to have in place a system of internal quality inspections before machines left its factories.

12 The defendant next produced the China National Machine Tools Quality Inspection Centre Report which is an export quality licence dated 16 June 2008. The report stated that the Drilling Machine was tested on 11 to 12 June 2008, that the date of production of the Drilling Machine was May 2008 and that its condition was good and found to comply with the required standards. The defendant explained that the testing involved about 50 hours of testing or running the Drilling Machine.

13 The defendant’s expert pointed out that the Drilling Machine components had been shipped from China to Singapore where they were assembled and repainted. [\[note: 4\]](#) Furthermore, the Drilling Machine had remained unused and in place at the plaintiff’s Factory under high humidity and temperature which might have affected the visual inspection of the plaintiff’s second expert who conducted his inspection one year after the delivery of the Drilling Machine. [\[note: 5\]](#)

14 The plaintiff’s first expert observed that “some portion that appear to indicate worn characteristics (such as loose bearings, scratch marks, poor electrical wiring, dusty and worn out controller [*sic*], dirt in filter of hydraulic pump etc)”. These related to messy wires, oil, dirty and scratched control panel, clamped lubrication hose and other scratches.

15 The defendant’s expert responded that apart from wear and tear and the effects of the Drilling Machine remaining unused in high humidity and temperature, the other deficiencies were minor or trivial and that they could be cleaned up, touched up or rectified during the commissioning of the Drilling Machine. With respect to the hydraulic pump, the defendant had explained that it could be cleaned up and that its original colour was blue when purchased from the suppliers and that it was re-sprayed green to match the colour of the Drilling Machine.

16 In the light of the above, the plaintiff has not discharged his burden of proof on a balance of probabilities that the Drilling Machine delivered was not new but refurbished. These deficiencies, which could have been rectified upon commissioning of the Drilling Machine, did not establish that the Drilling Machine was not new but refurbished.

17 The plaintiff next averred that in the Drill Contract specification, the Drilling Machine was described as 11m long, but the delivered Drilling Machine was 13.5m long. Sometime in March 2008, the defendant provided the plaintiff with a copy of the first foundation drawing for the defendant to prepare the floor base for the Drilling Machine. This first foundation drawing revealed that the length of the Drilling Machine was 13.5m rather than 11 metres. From this, the defendant discovered that they had made an error in the Drill Contract where they had inserted a length of 11m. By way of correction, the defendant then told the plaintiff of this error. The defendant’s evidence is that the plaintiff then proceeded to measure the floor space of the Factory and told the defendant that there was more than enough space to accommodate the Drilling Machine. The plaintiff denied that the defendant had pointed out this error to him based on the first foundation plan although he admits having received it. He also denied having measured the floor space and telling the defendant that

there was space to accommodate the 13.5m-long Drilling Machine. In any event, it is undisputed that the Factory floor space can accommodate the Drill Machine of 13.5m. The plaintiff proceeded to propose amendments to the foundation plans to relocate the floor base. He then proceeded to prepare the floor base. Finally, upon delivery of the Drilling Machine, he accepted the delivery and installation of the Drilling Machine. In these circumstances I find that he had by conduct signified his knowledge of the correct length of the Drilling Machine and his agreement to the correction.

18 The plaintiff next averred that the drilling machine delivered was not the Drilling Machine purchased under the Drill Contract because the Drill Contract model number was stated to be DB2125/4000 whilst the Drilling Machine delivered had a display plate attached stating the model number to be TK2125A. The defendant's explanation for the difference in the model numbers are as follows: (1) "D" stands for drilling whilst "B" stands for boring, (2) in China, "T" stands for "tang", the *hanyu pinyin* initial for bore and "K" is the *hanyu pinyin* initial for control; and (3) the numbers 2125 are critical in that 2 stands for horizontal, 1 for drill and bore and 25 for the largest (bore) diameter of 250. In short, all the numbers represent that the same product with the same specification as ordered by the defendant had been delivered. The plaintiff, relying on the current website of the manufacturer's data relating to TK2125A pointed out that this revealed some further specification differences from DB2125/4000 as set out in the Drill Contract. The defendant pointed out that this brochure described the latest model of TK2125A, which had different specifications from the previous model, but performs all the requirements of the plaintiff. Accordingly, it was conceded by the plaintiff's counsel that no issue would have arisen had the defendant simply replaced the model number plate with another plate which stated the model DB2125/4000. In short, that the model number plate in and of itself had little bearing on whether the defendant had supplied goods which conformed to their description. I find that there was no ground for repudiation of the Drill Contract by reason only of the different model numbers set out in the model number plate.

19 I next turn to the remaining issues raised relating to other terms of the Drill Contract, *viz*, the on-site inspection and the notification. Even if these terms were breached, these were not breaches which would entitle the plaintiff to repudiate the Drill Contract. If at all, they may sound in damages. However there is in my finding no breach of the inspection obligation because I accept the defendant's evidence that the plaintiff had agreed to dispense with the China factory inspection in substitution for the provision of two Chinese engineers to train the plaintiff to operate the Drill Machine in Singapore. The notification ground was not pursued further.

Lathe Contract

20 The plaintiff had repudiated the Lathe Contract on the following grounds: (1) for late delivery after the receipt of the 30% deposit from the defendant; and (2) for failure to arrange for the inspection of the Lathe at the manufacturer's plant. There was no basis for the second ground as the Lathe Contract did not contain any obligation to provide for inspection at the manufacturer's plant. This printed condition had been deleted, and initialled by the defendant's representative Andy Lok on the date of the Drill Contract and this had not been disputed in court.

21 The Lathe Contract was entered on 21 December 2007 and the defendant informed the plaintiff of its arrival in Singapore in September 2008. On the question of late delivery, s 10(2) read with s 10(1) of the Sale of Goods Act provides that whether any stipulation as to time other than for payment are of essence of a contract depends on the terms of the contract. Nothing in the Lathe Contract provided that time is of the essence. The Lathe Contract of 21 December 2007, stipulates "approx. 6 months manufacturing completed upon received of deposit" expressly contemplates manufacture after receipt of the deposit and an approximate delivery time. Finally the plaintiff claimed that the Lathe Contract obliged the defendant to provide a 12 month warranty from the date of

installation and commissioning. The plaintiff disputed the assertion of the defendant's lawyers that this warranty is to commence from the date of manufacturer's delivery of the Lathe. This dispute in the circumstances is moot and cannot provide a legal basis for the plaintiff's repudiation of the Lathe Contract. Should a dispute materialise, the plaintiff remains at liberty to seek appropriate relief including damages.

Conclusion

22 Given my findings and inferences of facts, the plaintiff's claim is dismissed with costs to be taxed or agreed.

[\[note: 1\]](#) AEIC of Liam Kok Chye at page 8

[\[note: 2\]](#) NE Day 7 pg 5

[\[note: 3\]](#) NE Day 7 pg 13

[\[note: 4\]](#) AEIC of Dr Huang Xianya at pg 27, 131

[\[note: 5\]](#) AEIC of Dr Huang Xianya at pg 24 and 39

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