

The Relationship between Satisfactory Quality and Fitness for Purpose

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THE RELATIONSHIP BETWEEN SATISFACTORY QUALITY AND FITNESS FOR
PURPOSE

IN *Jewson Ltd. v. Kelly* [2003] EWCA Civ 1030 (28 July 2003), the Court of Appeal took an opportunity to clarify the relationship between the terms implied by section 14(2) and section 14(3) of the Sale of Goods Act 1979 (SoGA). Mr. Kelly had acquired a building which he intended to convert into self-contained flats which were then to be sold. It was necessary to install individual heating boilers in each of the flats, and, having decided that it would be too expensive to extend the gas supply to each of the flats, he contacted Jewson Ltd., a builders' merchant. Jewson's enquiries led to the identification of a particular type of electric boiler which, it was claimed in the promotional literature, would provide a cost-effective heating alternative to gas-powered boilers which complied with all the relevant regulations. Mr. Kelly bought the boilers for installation in the converted flats and they appeared to work well. However, the SAP ratings of the flats following the installation of the boilers were considerably below an acceptable level, making the flats less attractive to prospective purchasers. (SAP ratings are calculated using a Standard Assessment Procedure to establish the energy efficiency of residential dwellings. These ratings depend on, *inter alia*, the characteristics of the dwelling and the home energy system used.)

Mr. Kelly claimed that the boilers were sold in breach of both subsections 14(2) and (3) SoGA. Section 14(2) implies a term into a contract of sale that goods supplied under the contract must be of satisfactory quality, whereas section 14(3) implies a term that where a buyer expressly or impliedly makes known to the seller any particular purpose, the goods are reasonably fit for that purpose unless it was unreasonable for the buyer to rely on the skill or judgment of the seller. At first instance, he succeeded, but the Court of Appeal unanimously allowed Jewson's appeal.

The Court first held that there was no breach of the term implied by section 14(3) in this instance. Having considered aspects of Lord Diplock's opinion in *Christopher Hill Ltd. v. Ashington Piggeries* [1972] A.C. 441 (at 507–508), Clarke L.J. held that the buyer's reliance under section 14(3) does not have to extend to all aspects of the goods' fitness for the buyer's particular purpose, and that reliance may be partial only. Mr. Kelly relied on Jewson only with regard to "the extrinsic qualities" (para. [59]) of the boilers, but not with regard to the suitability of these boilers for installation in his flats and the effect on the flats' SAP ratings. Moreover, it would not have been reasonable for Mr. Kelly to rely

on Jewson in relation to the SAP ratings because calculating the SAP ratings required knowledge not only of the characteristics of the boilers, but also of the characteristics of the building and the flats. As Mr. Kelly had insufficiently communicated his purpose, there could not have been reasonable reliance (cf. Lord Steyn in *Slater v. Finning* [1997] A.C. 473 at 486). Moreover, the boilers were of satisfactory quality because they performed as a reasonable person would expect. The low SAP ratings were not a relevant factor in applying the test.

Clarke and Sedley L.J.J. both commented generally on the distinction between section 14(2) and section 14(3). Thus, section 14(2) established a general quality standard, whereas section 14(3) imposed “a particular obligation tailored to the particular circumstances of the case” (para. [47]). Establishing whether goods are of satisfactory quality requires consideration of whether the goods “meet the standard 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” (section 14(2A) SoGA). Section 14(2B) provides a list of relevant factors “in an appropriate case”, which are fitness for all the purposes for which the goods are commonly supplied; appearance and finish; freedom from minor defects; safety; and durability. This test is flexible and its result may vary from case to case, depending on which circumstances are deemed to be relevant. However, “factors peculiar to the purposes of a particular buyer” would not be relevant circumstances for the purposes of section 14(2) (*per* Sedley L.J. at para. [77]). The reasonable person in section 14(2A) was not a reasonable person “equipped with the buyer’s personal agenda” (para. [78]).

Clarke L.J. recognised that there is “scope for debate” as to how far the purposes for which the buyer requires the goods may be relevant circumstances, but then concluded, perhaps a little cautiously, that “a particular purpose which is not one of the ordinary uses for which the goods of the relevant type are generally supplied” (para. [69]) was irrelevant, although he conceded that there may be exceptions. Thus, section 14(2) deals with the intrinsic qualities of the goods, whereas section 14(3) extends to extrinsic factors, provided that these are made known sufficiently to the seller. Sedley L.J. noted that in the present case, the effect of the boilers on the flats’ SAP ratings was an extrinsic factor and did not affect the intrinsic quality of the boilers; as such, this was a factor specific to the buyer and fell to be considered under section 14(3) SoGA. As Mr. Kelly had not made his purpose sufficiently clear to the seller, there was no breach of the implied term.

The distinction between section 14(2) and section 14(3) set out in the judgments of Clarke and Sedley L.JJ. is helpful in so far as it emphasises that unusual or peculiar purposes for which goods are required are properly considered under section 14(3) and not under section 14(2). However, in the context of a particular situation, it may be difficult to distinguish between “intrinsic” and “extrinsic” factors of the goods. For example, the position might have been different if the boilers *never* produced an acceptable SAP rating irrespective of where they were installed. In that case, the SAP rating issue could become an intrinsic feature of the goods, and it is likely that there would be a breach of section 14(2). The judgment nevertheless provides a degree of clarification of where the dividing line between section 14(2) and section 14(3) should be drawn. It does not, however, affect the fact that where goods fail to be suitable for their normal purposes it will be possible to establish a breach of both section 14(2) and section 14(3). Once the purpose is a narrow and peculiar one, section 14(2) ceases to be of relevance and section 14(3) will be the only route for the claimant to pursue.

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MISTAKEN IDENTITY IN THE HOUSE OF LORDS

THE House of Lords, in *Shogun Finance Limited v. Hudson* [2003] UKHL 62, [2003] 3 W.L.R. 1371, affirmed the decision of the Court of Appeal (reported at [2002] Q.B. 84, and noted in this *Journal* ([2002] C.L.J. 272 at 273–276)). As the first significant decision of the House on mistake in over seven decades, *Shogun Finance* is both satisfactory and disappointing for the reasons set out below.

The facts were, in brief, that a rogue obtained a motor vehicle fraudulently by signing a hire-purchase agreement with a forged signature and then sold on the vehicle to the defendant, who purchased it for value and in good faith. The rogue had utilised a genuine driving licence of one P which the rogue had unlawfully procured in order to perpetrate the fraud. The dealer’s sales manager at the showroom furnished the claimants (a finance company) with P’s particulars, a copy of the licence as well as the draft agreement containing P’s signature (forged by the rogue) via phone and fax. The claimants accepted the hire purchase proposal after conducting certain computer checks on P’s credit rating, the results of which were satisfactory. On payment by the rogue of a deposit, the dealer handed the vehicle to the rogue with the necessary documentation. The claimants then brought a claim