National Foods Ltd v Pars Ram Brothers (Pte) Ltd
[2007] SGCA 23

Case Number : CA 118/2006

Decision Date : 23 April 2007

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Lai Siu Chiu J; Andrew Phang Boon Leong JA

Counsel Name(s) : Lai Swee Fung and Low Eng Wan Eric (UniLegal LLC) for the appellant; Palaniappan Sundararaj, N Sreenivasan and Choo Ching Yeow Collin (Straits Law Practice LLC) for the respondent

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

Contract – Contractual terms – Implied terms – Sale of goods – Contracts for sale of dried ginger slices for export to Pakistan – Ginger slices heavily contaminated with mould and having high ash content – Whether implied conditions of quality and fitness for purpose under Sale of Goods Act breached – Sections 14(2), 14(3) Sale of Goods Act (Cap 393, 1999 Rev Ed)

Contract – Contractual terms – Implied terms – Sale of goods – Whether additional term that ginger slices would not contain more than 7% ash content could be implied into contract – Section 14(1) 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 – Food Regulations (Cap 283, Rg 1, 2005 Rev Ed), Sale of Food Act (Cap 283, 2002 Rev Ed)

23 April 2007 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

1 The appellant, National Foods Limited, is a public listed company incorporated in Pakistan and carries on the business of trading, manufacturing, packing and selling food items and products. The respondent, Pars Ram Brothers (Pte) Ltd, is a locally incorporated company and carries on the business of trading in natural produce, in particular, spices such as cloves, cumin seeds and ginger. The parties have an established trading relationship. From 2000 to 2004, the appellant purchased various quantities of products such as cassia, nutmeg, clove stems and dried ginger slices from the respondent. Those transactions proceeded smoothly.

2 In August 2004, the appellant entered into four contracts ("the Contracts") with the respondent to purchase dried ginger slices of Chinese origin. It was not disputed that the Contracts were governed by Singapore law and contained identical terms except with respect to the quantities of ginger slices sold under each contract. Delivery of the ginger slices was to be made to Karachi in September and October 2004. Under the Contracts, the ginger slices were first to be landed in Singapore and tested for quality and weight by SGS Testing & Control Services Singapore Pte Ltd before being shipped to Karachi.

3 The ginger slices supplied under the first two contracts arrived in Karachi on 12 September 2004. The appellant discovered that the ginger slices were heavily contaminated with mould and, on 14 September 2004, requested the respondent to halt the remaining shipments. On 23 September 2004, the appellant registered more fully their complaints with the respondent. In particular, the appellant complained that the ginger slices had high mould count, high moisture level and were dirty

as well as full of dust.

4 On 24 September 2004, the parties reached an agreement whereby, in full and final settlement of the respondent paying the appellant US$5,000, the appellant would reclean the ginger slices by dehydrating it. As the third and fourth batches of ginger slices had not yet arrived at that point in time, the settlement agreement only covered the ginger slices supplied under the first two contracts.

5 Subsequently, the ginger slices under the third and fourth contracts arrived on 27 September 2004 and 7 October 2004, respectively. The appellant once again complained that the ginger slices were very dirty and that the percentage of ash was too high. The appellant made several attempts to clean and dehydrate the ginger in order to make it fit for use but its efforts ultimately proved futile. The ginger slices are presently still being held at the appellant's warehouse.

6 Efforts to resolve the matter amicably failed and the appellant commenced the present action in June 2005. In its re-amended statement of claim, the appellant alleged that the ginger slices had, *inter alia*, high ash content, high moisture content, excessive fungal growth and were dirty as well as dusty. The appellant's case both at trial as well as before this court was, however, based solely on the high ash content of the ginger slices.

7 It would be helpful at this juncture to set out some basic facts on the nature of ash. Ash in vegetables consists of vegetable matter which remain after the vegetable has been burnt at high temperatures. After the organic part of the vegetable matter has been burnt, the ash that remains consists of inorganic salts like sodium, potassium, copper, iron, selenium and magnesium. These salts are naturally found in vegetable matter. The ash usually also contains extraneous material such as sand or soil particles.

8 The appellant arranged for samples of the ginger slices to be tested by, *inter alia*, the Pakistan Council of Scientific & Industrial Research ("PCSIR") and PSB Corporation Pte Ltd ("PSB"). The various test results revealed the following ash content in the ginger slices concerned:

(a) PCSIR report dated 22 November 2004 — ginger slices contained ash content of 14.34%.

(b) PCSIR report dated 3 December 2004 — ginger slices contained ash content of 19.02%. In addition, the report stated that the sample of ginger slices tested was unfit for human consumption.

(c) The appellant's internal laboratory report dated March 2005 — two samples of ginger slices contained ash content of 15.4% and 19.5%.

(d) PSB report dated 20 April 2005 — ginger slices contained ash content of 20.1%. The report also showed that the samples contained traces of arsenic, lead and copper.

(e) PSB report dated 5 April 2005 — various samples of ginger slices all contained ash content of between 14.1% and 19.3%.

The respondent did not conduct any laboratory tests to analyse the ash content of the ginger slices or, if they did, failed to produce results for the same.

9 The high ash content of the ginger slices was significant in light of Regulation 227 of the Food Regulations (Cap 283, Rg 1, 2005 Rev Ed) ("Reg 227"), which provides as follows:

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 —

…

(b) *not more than 7% total ash;*

…

[emphasis added]

10 The Food Regulations are made under s 56(1) of the Sale of Food Act (Cap 283, 2002 Rev Ed) ("the SFA"). The purpose of the SFA, as provided for in its preamble, is to secure "wholesomeness and purity of food and fixing standards for the same" and to prevent the sale of articles "dangerous or injurious to health".

11 In the lower court as well as in this court, the appellant contended that there had been a breach of the implied conditions of quality and fitness for purpose under ss 14(2) and 14(3) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("the SOGA"). Sections 14(2), 14(2A), 14(2B) and 14(3) provide as follows:

(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.

…

(3) 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.

12 In particular, the appellant relied on the PCSIR and PSB test results as proof of the fact that the ginger slices were not of satisfactory quality and/or were not reasonably fit for the particular purpose for which they were bought.

13 The learned trial judge ("the Judge") dismissed the appellant's claim (see *National Foods Ltd v Pars Ram Brothers (Pte) Ltd* [2006] 4 SLR 640 ("GD")). In relation to s 14(2) of the SOGA, the Judge found that the appellant had not discharged its burden of proving that the ginger slices were not of satisfactory quality. In relation to s 14(3) of the SOGA, the Judge found that the provision applied because the respondent understood that the appellant had purchased the ginger slices for the purpose of usage in food products. Nevertheless, the Judge found that the appellant had failed to show that the ginger slices were not reasonably fit for such a purpose, and therefore held that the condition implied by s 14(3) had not been breached.

Issues

14 The appellant raised three main issues on appeal:

(a) Was it an implied term of the Contracts that the ash content of the ginger slices should not exceed 7%? If so, had such an implied term been breached?

(b) Had the respondent breached the implied term of satisfactory quality under s 14(2) of the SOGA?

(c) Was there a term implied by s 14(3) of the SOGA that the ginger slices would be reasonably fit for the purpose for which the appellant purchased them? If so, had such an implied term been breached?

Preliminary point – SOGA cases by way of analogy of limited assistance

15 As a general (but important) preliminary point, we note that a number of cases were cited to us by the parties – principally by way of analogy. However, as Lord Wilberforce observed generally in the House of Lords decision in *Henry Kendall & Sons (a firm) v William Lillico & Sons, Ltd* [1968] 2 All ER 444 ("*Henry Kendall*") at 490, "the 'fact to fact' approach is not merely circuitous but perilous". Indeed, as the number of possible fact situations is vast and variegated in the sale of goods context (if nothing else because of, *inter alia*, the variety of possible products and the respective variations therein), it is, in our view, more productive to focus on the relevant provisions of the SOGA as they apply to the precise facts in the case at hand. Thus, Lord Morris echoed similar sentiments in the same case (at 463–464):

> The Act of 1893 [the UK Sale of Goods Act 1893, and the Act on which the SOGA is based] was an Act for codifying the law relating to the sale of goods. If its provisions are clear, it should be possible to reach decision by reference only to the facts that arise in some particular situation. The law as it evolved before 1893 is revealed by a study of a number of notable decisions. The law since 1893 is in the terms of the statute. Many of the reported cases since 1893 are seen,

when analysed, to be no more than decisions on the facts of a case whether the words of the section applied. I therefore limit my citations.

16 The observations just quoted were made in the context of what is presently s 14(3) of the SOGA. However, they are of equal application not only to s 14 of the SOGA generally but also to the other provisions of that Act. Where, of course, the cases deal with the *general* legal principles that are to be applied in the context of the relevant provisions of the SOGA, they remain (as we shall see) of great assistance.

Does Reg 227 apply to the Contracts?

17 Before addressing the three issues listed in [14] above, we would first like to deal with the preliminary issue of whether Reg 227 applies to the Contracts. The significance of this preliminary issue will become apparent later.

18 In order to ascertain whether Reg 227 applies to the Contracts, the prior question of whether the SFA and the Food Regulations apply to the Contracts must first be determined.

Do the SFA and Food Regulations apply to the Contracts?

19 The respondent argued that the SFA and the Food Regulations do *not* apply to the Contracts because the ginger slices were not meant for sale within Singapore. They reason that Parliament could not have intended to legislate standards for food items, including requirements with reference to labelling, constituents of food offered for sale, and other incidental matters, that were not intended for sale or use within Singapore.

20 The Judge rejected this argument and held that the SFA and Food Regulations applied to the Contracts (see GD at [36]–[39]). He relied on the definition of "sale" or "sell", under s 2 of the SFA, which provides as follows:

> "sale" or "sell" includes 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[.]

21 The Judge noted that the respondent made the sale from its office in Singapore and that the parties had agreed that the Contracts were to be governed by Singapore law. The respondent's construction of the word "sell" to exclude export sales was therefore too restrictive. In the absence of a clear intention on the part of the Singapore Parliament that the standards in the Food Regulations should apply only to food sold for use in Singapore, the Judge held that no such restriction should be applied.

22 Indeed, there is no express indication in the SFA or the Food Regulations that the Singapore Parliament intended the standards contained therein to apply only to food sold for use in Singapore. There must, however, be a logical boundary to the ambit of the SFA as the Singapore Parliament could not have intended it to be of unlimited (and potentially worldwide) application. With regard to imported goods that are re-exported for sale, we are of the view that the boundary has been expressly delimited by the definition of "import" under s 2 of the SFA. Section 2 provides as follows:

> "import", with its grammatical variations and cognate expressions, means to bring or cause to be brought into Singapore by land, water or air from any place which is outside Singapore *but does not include the bringing into Singapore by water or air of any goods which it is proved to be intended to be taken out of Singapore on the same vessel or aircraft on which they were brought into Singapore without any landing or transhipment within Singapore* [emphasis added]

23 It can be inferred from this definition that the intention of the Singapore Parliament was that food which is merely on transit in Singapore, in the sense that it would not land or be transhipped within Singapore, would *not* be subject to the SFA. This position is both logical and commonsensical as the Singapore Parliament could not have intended the SFA to have *almost unlimited* application to *every* food product that is brought into Singapore for any purpose, regardless of whether it is immediately re-exported or otherwise. This construction is particularly apposite in light of the fact that Singapore is an international port of call and voluminous quantities of food products pass through it daily, whether destined for sale in Singapore itself or merely on transit to another country. The italicised words in the definition above clearly indicate that imported food products which are intended to be re-exported would only be subject to the SFA if the goods "land" in Singapore.

24 This is where the respondent's argument fails. The evidence was that once the imported ginger slices from China reached Singapore, they were to be stored in a warehouse where they were to be tested for quality and weight by SGS Testing & Control Services Singapore Pte Ltd. This testing was mandatory under *the terms of the Contracts*. For the purposes of the SFA, therefore, the ginger slices had "landed" in Singapore. It follows that the respondent's argument that the SFA should not apply simply because the goods were to be re-exported to Pakistan cannot pass muster.

25 In support of its arguments, the respondent relied on the case of *Henry Kendall* ([15] *supra*). In that case, the House of Lords had to consider the application of the UK Fertilizers and Feeding Stuffs Act 1926 to a cost, insurance and freight (CIF) contract for the sale of Brazilian ground nut extractions. The majority of the House of Lords held that the statutory warranty contained in s 2(2) of the 1926 Act applied. The respondent relied on the minority judgments of Lord Reid and Lord Guest.

26 The salient parts of Lord Reid's judgment are as follows (at 459– 460):

> Accordingly I must go back to the Act of 1926 and examine its purpose and effect. It attaches the warranty to sales of feeding stuffs for cattle or poultry. That is obviously intended to protect live-stock and its owners and Parliament must have had in mind primarily at least livestock in this country. There is a general presumption that Parliament does not intend to legislate with regard to things done abroad; and this provision cannot be held to apply to a foreign sale which has no other connexion with this country than that it was the buyer's intention to bring the feeding stuffs here for use in this country. Farther, I do not think that Parliament can have intended the warranty to attach to an English contract for the sale of feeding stuffs which are in transit to a foreign country.

27 In a similar vein, as already mentioned above, we also recognise the fact that the Singapore Parliament could not have intended the SFA and the Food Regulations to have unlimited application. However, in light of the definition of "import" in s 2 of the SFA, we find Lord Reid's pronouncement to be of limited application to the present facts. At the heart of the matter, the respondent is a locally incorporated company subject to Singapore laws. They entered into an agreement to sell ginger slices to the appellant under contracts that governed by Singapore law. Under the terms of the Contracts, the ginger slices were to land in Singapore, be stored in a Singapore warehouse and tested by a Singapore company. In such circumstances, we find that the SFA and the Food Regulations clearly apply to the Contracts.

Does Reg 227 apply to the Contracts?

28 Having established that the SFA and the Food Regulations apply to the Contracts, we now consider whether Reg 227 also applies to the same. To recapitulate, Reg 227 provides:

> 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 —
>
> …
>
> (b) not more than 7% total ash;
>
> …

29 The Judge held that Reg 227 was not applicable. He reasoned that Reg 227 appeared in the part of the Food Regulations under the heading "Spices and Condiments" which covered regulations 213 to 236. Regulation 213 ("Reg 213") was a general provision which was to be read with each of the subsequent provisions, including Reg 227, and provides as follows:

> 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.

30 The Judge concluded that Reg 213 and Reg 227 had to be read together so that only ginger sold as a "spice or condiment" must comply with the standards set out in Reg 227. Where ginger was sold for other purposes, Reg 227 would not apply. On the facts, the Judge found that the ginger slices were *not* sold as spices or condiments, but had to be processed before being used for the flavouring of food. Regulation 227 was therefore not applicable to the Contracts.

31 With respect, we do not agree that the ginger slices were *not* sold as spices or condiments. We also disagree with the attempt by counsel for the respondent, Mr Palaniappan, to draw a distinction between selling the ginger slices as food on the one hand, and as a spice or condiment on the other. Ginger is a natural food product which is used in many forms, typically, as fresh ginger, or as a spice or condiment (governed by Reg 227), or in flavouring essences (governed by Reg 238 of the Food Regulations). The fact that ginger is sold as a spice or condiment does not make it any less of a food product than, say, ginger sold in its fresh form. Hence, it follows that when ginger is sold, it is normally sold as a food product and in particular, where dried ginger is sold, it is normally sold as a spice or condiment. In light of this, if a seller, such as the respondent in the present case, wishes to dispute the fact that the dried ginger slices were *not* sold as spices or condiments, it bears the burden of proving that they were sold as something else. The distinction drawn by Mr Palaniappan is simply not a sustainable one because a spice is merely a special type of food product. In this regard, we note that Mr Palaniappan was unable to provide us with a satisfactory explanation on the purpose for which the ginger slices were sold if, as he argued, they were not sold as spices or condiments.

32 On the present facts, we find that the ginger slices were sold as spices or condiments, and therefore that Reg 227 applies to the Contracts. Indeed, we were fortified in our conclusion when we examined the evidence which clearly showed that both parties understood the ginger slices to be sold as spices. We will first consider the Harmonized Commodity Description and Coding System ("H S Code"), on which the appellant strongly relied. Some elaboration is now necessary.

33 The H S Code is a code administered by the World Customs Organisation and is used in international trade for identification purposes to facilitate the collection of custom duties and international trade statistics. In the present case, H S Code No 0910.1000 was used in numerous documents relating to the Contracts, including the letter of credit, the bill of lading and the respondent's commercial invoice. H S Code No 0910.1000 is the code for ginger and comes under Chapter 9.10, which heading reads, "Ginger, Saffron, Turmeric (Curcuma), Thyme, Bay Leaves, Curry and *Other Spices*" [emphasis added]. Therefore, one can deduce that H S Code No 0910.1000 is the code assigned to ginger *traded as a spice*. If the respondent had supplied the ginger slices as a vegetable or medicine or cosmetic, then a different H S Code would apply.

34 We find that the stipulation of H S Code No 0910.1000 in the related contractual documents reinforces our finding that the ginger slices in question were sold *as spices*. The standards prescribed in Reg 227 therefore applied. We note that the issue of the H S Code was not raised before the Judge and that was perhaps why he arrived at a different conclusion on the issue of whether the ginger slices were sold as spices or condiments. Even though no evidence was led below as to the specifics of the H S Code, we had no doubt that the respondent, being an experienced international trader, would be extremely familiar with the workings of the H S Code.

35 Our conclusion that the ginger slices were sold *as spices* was fortified when we examined the substance of the matter and the trading relationship between the parties. The respondent was operating a business that dealt primarily with the export of spices and claimed a specialisation in exporting "all types of authentic natural spices in whole and grounded form", including ginger. The parties had an established trading relationship in which the appellant purchased various quantities of spices such as cassia, nutmeg, clove stems and dried ginger slices from the respondent between 2000 and 2004.

36 Further, counsel for the appellant, Mr Lai Swee Fung, also pointed out numerous instances where the respondent itself had described the ginger slices as "spices". For example, on 7 August 2004, the respondent sent a sample of the dried ginger slices to the appellant. This was accompanied by the respondent's invoice describing the ginger slices as "SAMPLE OF SPICES". Although the Judge rejected the respondent's defence of sale by sample, the invoice nevertheless constitutes evidence that the respondent treated the ginger slices *as spices*. Another example may be found in the respondent's Answer to Interrogatories dated 24 February 2006, where the respondent admitted that the appellant constituted "importers of *spices,* such as cloves, cassia, maize, *dried ginger* and clove stems" [emphasis added].

37 In light of the clear evidence above, the respondent's bare assertion that the ginger slices were not sold as spices must be rejected. While it may be that the appellant never *expressly* made known to the respondent the specific purpose for which they required the ginger slices, this factor, if at all, cannot be sufficient to counter the stark evidence clearly demonstrating that both parties understood that the ginger slices *were sold as spices*. Indeed, the respondent's argument on this point appears to be a mere afterthought latched on to only after Reg 213 was brought to the attention of the Judge. The appellant pointed out that the respondent's pleaded defence in relation to the application of Reg 227 had always been based on the *sole* ground that the SFA and the Food Regulations did not apply to the Contracts.

38 For the reasons we have given, we find that the standards prescribed in Reg 227 applied to the Contracts.

Standards prescribed by Reg 227 had been breached

39 Before proceeding to address the main issues proper, we would note at this juncture that the standard for ash content in ginger prescribed by Reg 227 has been breached. The appellant, through its numerous scientific test results from PCSIR and PSB (see [8] above), has shown that the ginger slices contained ash content well in excess of 7%.

40 The respondent's objections with regard to the sampling procedure adopted by the appellant must be rejected. The respondent itself had neither taken the trouble to inspect the ginger slices nor conducted its own laboratory tests. In the absence of reports to prove otherwise, the respondent's mere allegations are unsupportable and we accept the test results adduced by the appellant. Indeed, the Judge appears to have impliedly accepted the same by observing as follows (see GD at [21]):

> The [appellant] 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*. [emphasis added]

41 Having established that Reg 227 is applicable to the Contracts, and that the standards prescribed by Reg 227 have been breached, we now proceed to rule on the issues raised by the appellant.

Regulation 227 as an implied term of the Contracts

42 The first issue raised by the appellant was that, by virtue of Reg 227, it was an implied term of the Contracts that the ginger slices must contain ash content of not more than 7%. Since such an implied term was breached (as evidenced by the scientific test results), the appellant argued that it was entitled to succeed.

43 The appellant's argument is, with respect, misconceived. In so far as the *quality or fitness for any particular purpose* of goods supplied under a contract of sale is concerned, the terms implied by the SOGA are exhaustive, *ie*, there can be no other terms implied by the common law. This is expressly provided for in s 14(1) of the SOGA:

> Except as provided by this section and section 15 and subject to any other enactment, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.

44 Section 14(1) of the SOGA thus prevents the implication of contractual terms, other than those already stipulated in s 14 and s 15, which would impose *additional* responsibilities on the seller in respect of the *quality or fitness for purpose* of the goods. As the ambit of the terms implied by s 14 is already very broad, it would indeed be difficult to envisage a situation where parties can imply *further* terms pertaining to quality and fitness for purpose that would not already fall within the ambit of s 14.

45 That is, however, not to say that *no* other terms may be implied into contracts for the sale of goods. Firstly, we note that terms as to quality of fitness for a particular purpose may still be implied by usage. Thus, s 14(4) of the SOGA provides, "An implied condition or warranty about quality or fitness for a particular purpose may be annexed to a contract of sale by usage".

46 Secondly, on a more general level, the common law (in so far as it is not inconsistent with

the provisions of the SOGA), including the law of contract governing the implication of terms, continues to operate to supplement the SOGA (see M G Bridge, *The Sale of Goods* (Clarendon Press, 1997) ("*Bridge*") at p 273). This is made clear by s 62(2) of the SOGA, which provides that "[t]he rules of the common law, including the law merchant, *except in so far as they are inconsistent with the provisions of this Act*, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, apply to contracts for the sale of goods" (emphasis added). Nevertheless, it has been pertinently pointed out that "this is comparatively rare in that the [SOGA] itself implies most of the terms that are relevant" (see *Benjamin's Sale of Goods* (Sweet & Maxwell, 7th Ed, 2006) at para 11-089). It is clear, however, that even under the established principles of the common law, terms will not be lightly implied by the courts (see generally the Singapore High Court decision of *Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd* [2006] 1 SLR 927 at [28]–[44] and the Singapore Court of Appeal decision of *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR 769 at [89]–[92]). More importantly, as we have already pointed out, *additional* terms which relate to *quality or fitness for purpose* save as provided in s 14 cannot be implied simply because s 14(1) of the SOGA unambiguously says so. Further, s 62(2) of the same Act (as reproduced above) confirms that any additional terms would clearly be inconsistent with s 14(1) – a provision that is undoubtedly intended to be exhaustive in this particular regard.

47 Regulation 227 undoubtedly prescribes a standard pertaining to *quality*. This is obvious from the preamble to the SFA (see [10] above). Further, Pt IV of the Food Regulations states that it regulates "standards" for food and this obviously covers the *quality* of food products. Dr Wong Kwok Onn, head of the Food Safety and Control Division with the Agri-Food and Veterinary Authority of Singapore, also testified that Reg 227 governs the safety and quality of the ginger slices. Indeed, Mr Palaniappan repeatedly emphasised to this court that Reg 227 merely prescribed a standard for *quality*.

48 Thus, on the clear words of s 14(1) of the SOGA, the appellant's argument that the Reg 227 implied a term into the Contracts that the ginger slices would not contain ash of more than 7% cannot succeed. We therefore now turn to consider the issues relating to the implied terms of quality and fitness for purpose under the SOGA.

SOGA claims

Relationship between s 14(2) and s 14(3) SOGA

49 Before discussing the issues arising in this appeal under ss 14(2) and 14(3) of the SOGA, it would be helpful to briefly examine at the outset the relationship between these two provisions. Primarily, s 14(2) only requires the goods to be of satisfactory quality. Section 14(2A) provides a definition of "satisfactory quality" and s 14(2B) then provides a non-exhaustive list of factors to take into account in assessing the quality of the goods. This includes the "fitness for all purposes for which goods of the kind in question are commonly supplied": see s 14(2B)(*a*). On the other hand, s 14(3) requires the goods to be reasonably fit for the particular purpose expressly or by implication made known to the seller. The standard prescribed by s 14(3) will normally be higher than that prescribed by s 14(2) if a special purpose is made known: *Chitty on Contracts* vol II (Sweet & Maxwell, 29th Ed, 2004) at para 43-100.

50 In this regard, the following observations by Clarke LJ in the English Court of Appeal decision of *Jewson Ltd v Leanne Teresa Boyhan* [2004] 1 Lloyd's Rep 505 at [46]–[47] are apposite:

> 46. Mr. McGuire submits that those conclusions were entirely justified whereas Mr. de Garr

Robinson submits that they confuse the requirements of the terms implied by subsections (2) and (3). His submissions may be summarised as follows:

(i) *There is a considerable overlap between subsections 14(2) and 14(3) but they perform different functions. The function of s. 14(2) is to establish a general standard which goods are required to reach, whereas the function of s. 14(3) is to impose a particular (higher) standard which is appropriate where the buyer (to the knowledge of the seller) buys the goods for a particular purpose and relies on the seller's skill and judgment for that purpose.*

(ii) Goods are satisfactory if they meet the standard which a reasonable person would regard as satisfactory: s. 14(2A).

(iii) In determining the standard that a reasonable person would regard as satisfactory, the circumstances which must be taken into account are any description of the goods, the price and all the other relevant circumstances: s. 14(2A).

(iv) In appropriate circumstances, certain defined features may be regarded as aspects of the quality of the goods, including fitness for all purposes for which goods of the kind in question are commonly supplied: s. 14(2B).

47. I would accept those submissions. It seems to me that under the statutory scheme set out in s. 14 it is the function of s. 14(3), not s. 14(2), to impose a particular obligation tailored to the particular circumstances of the case. The problem with which we are faced in this case is what the overlap is between subss. (2) and (3). It is important to note that this is not a case in which it is said that there was anything unsatisfactory about the intrinsic qualities of the boilers. What has been held to be unsatisfactory about them is their impact on the SAP ratings for the flats, which depends upon a number of factors which relate to the particular characteristics of the flats as well as the boilers. In these circumstances, it seems to me that it would be a startling result if Jewsons were liable for breach of the implied terms in s. 14(2) and not of the implied terms in s. 14(3).

[emphasis added]

51 In a similar vein, the following observations by Sedley LJ in the same case (at [77]) may also be usefully noted:

Section 14(2) is directed principally to the sale of substandard goods. This means that the Court's principal concern is to look at their intrinsic quality, using the tests indicated in subss. (2A), (2B) and (2C). Of these, it can be seen that the tests postulated in pars. (a) and (d) of subs. (2B), and perhaps others too, may well require regard to be had to extrinsic factors. These will typically have to do with the predictable use of the goods. But the issue is still their quality: neither these provisions nor the residual category of "all the other relevant circumstances" at the end of subs. (2A), make it legitimate, as a general rule, to introduce factors peculiar to the purposes of the particular buyer. It is s. 14(3) which is concerned with these.

52 In this regard, Clarke J also observed in the recent English High Court decision of *Balmoral Group Ltd v Borealis (UK) Ltd* [2006] 2 Lloyd's Rep 629 as follows (at [140]):

Section 14(2) of the Sale of Goods Act 1979 is primarily directed towards substandard goods.

> Although there is an overlap between sections 14(2) and (3) the function of 14(2) is to establish a general standard which the goods in question are required to reach, and not to ensure that they attain some higher standard of fitness for a particular purpose made known to the seller. In appropriate cases the question as to whether goods are of satisfactory quality may be determined by considering whether they are fit for all purposes for which goods of the kind in question are commonly supplied: section 14(2B)(a); *Jewson Ltd v Leanne Teresa Boyhan* [2004] 1 Lloyd's Rep 505.

53 In many sales, the standards required by ss 14(2) and 14(3) will coincide because the particular purpose for which the goods are required will usually be that for which the goods are commonly supplied. Thus, where the purpose for which the goods are commonly supplied and the particular purpose for which they are purchased (which has been made known to the seller) are one and the same, a breach of s 14(2) would usually signify a breach of s 14(3). The only caveat is that the court will not find a breach of s 14(3) in such circumstances if it finds that the buyer had not relied on the skill or judgment of the seller, or that such reliance was unreasonable in the circumstances.

54 As stated above, there are, however, some sales transactions in which the standards exacted by s 14(3) may be higher than those exacted by s 14(2). These are usually transactions in which the buyer requires the goods to possess some special quality to enable him to use them for some special purpose of his own, and the buyer makes known to the seller the special purpose for which the goods are required. In these cases, the seller is liable if the goods are not reasonably suited for that special purpose, even though they may be of satisfactory quality in general: see *Benjamin's Sale of Goods* ([46] *supra* at para 11-070). Also, for an in-depth comparison between, *inter alia,* ss 14(2) and 14(3), see P S Atiyah & John N Adams, *The Sale of Goods* (Pearson Longman, 11th Ed, 2005) ("*Atiyah*") at pp 211–212.

55 The present facts fall within the former category of sales transactions where the common purpose and the particular purpose for which the goods are required are the same. The particular purpose for which the appellant required the goods, *viz*, for use as food items, is also the common purpose for which ginger slices are supplied. Thus, there is a high degree of overlap between ss 14(2) and 14(3) of the SOGA in so far as the present proceedings are concerned.

Section 14(2) SOGA – was there a breach of the implied term of satisfactory quality?

56 The second issue raised by the appellant was that, the ginger slices clearly having been sold by the respondent "in the course of a business" within the meaning of s 14(2) (*cf* also the definition of "business" in s 61(1) of the SOGA), the high ash content of the ginger slices had breached the implied term of satisfactory quality under s 14(2). The respondent did not deny that s 14(2) gave rise to an implied term that the ginger slices should be of satisfactory quality. The brunt of contention instead arose from the issue of whether such an implied term had been breached.

General principles to be applied

57 It is helpful at this juncture to set out some general principles of law that are applicable under s 14(2) of the SOGA (reproduced above at [11]). This particular provision is of no mean importance. Indeed, in a leading textbook, it has been described thus (see *Atiyah* ([54] *supra*) at p 164):

> [I]t is in many respects the most important part of the law of sale of goods. It is here that the seller's obligations as to the quality of the goods supplied must be found, and this is the very

heart of the law of sale.

58 Turning now to the general principles of law applicable in the context of s 14(2) of the SOGA, in the recent Singapore High Court decision of *Compact Metal Industries Ltd v PPG Industries (Singapore) Ltd* [2006] SGHC 242, Sundaresh Menon JC succinctly restated the principles that would apply in assessing the standard of "satisfactory quality", as follows (at [102]):

> (a) The inquiry whether the goods are of a satisfactory quality is an objective one to be undertaken from the view point of a reasonable person.
>
> (b) The reasonable person in question is one who is placed in the position of the buyer and armed with his knowledge of the transaction and its background rather than one who is not so acquainted – *Bramhill v Edwards* [2004] 2 Ll Rep 653 at [39] ("*Bramhill*").
>
> (c) The burden of proof in this case is on the plaintiff who is alleging that the goods are not of satisfactory quality – see *Bramhill* at [41].
>
> (d) The inquiry is a broad based one directed at whether the reasonable person placed in the situation of the buyer would regard the quality of the goods in question as satisfactory.
>
> (e) At every stage of that inquiry, the Act clearly contemplates that the court should consider *any and all factors* that may be relevant to the hypothetical reasonable person. The Act does provide some practical guidelines to aid in structuring the inquiry.
>
> …
>
> [emphasis in original]

Implied term of satisfactory quality had been breached

59 On an overall assessment of the facts, we find that the appellant has discharged its burden of proving that the ginger slices were of unsatisfactory quality and that s 14(2) of the SOGA has therefore been breached.

60 In ascertaining whether s 14(2) has been breached, s 14(2B) of the SOGA provides a list of *non-exhaustive* factors for the court to consider in determining the quality of the goods. Thus, the court is not required to take into account all the factors listed in s 14(2B) — these are merely "aspects of the quality of goods" that should be taken into account only "in appropriate cases" and are not absolute requirements.

61 The two factors of relevance on the facts of the present appeal are to be found in sub-ss (*a*) and (*d*) of s 14(2B), which deal with fitness for purpose and safety, respectively.

62 The appellant did raise the argument that the factor of "freedom from minor defects" (s 14(2B)(*c*) of the SOGA) should also be taken into account. With respect, we are unable to agree. In essence, this particular factor is not a good indicator of the quality of agricultural products. The introduction of this new aspect of quality was mainly targeted at mass-produced manufactured consumer goods, and not at natural products such as fruits and vegetables where freedom from minor defects may be impossible to achieve: see *Atiyah* ([54] *supra* at p 187) and the English and Scottish Law Commission's Report on Sale and Supply of Goods (Cmnd 137, May 1987) at para 3.40.

63 We turn, now, to consider the first factor centring on fitness for purpose under s 14(2B)(*a*)

of the SOGA.

Section 14(2B)(a) – fitness for purpose

64 Section 14(2B)(*a*) provides that in assessing quality, the court should consider the "fitness for all the purposes for which goods of the kind in question are commonly supplied". One of the main issues in this appeal is whether the ginger slices were fit for the purpose of being used as a food product.

65 The key criterion in this regard is found in Reg 227. We should clarify, however, that Reg 227 operates merely as a *benchmark* or *standard* by which to assess quality, and does not operate, in and of itself, as an implied term of the Contracts (as explained above). Indeed, where the contract is silent as to the standard that is to be expected of the goods, a good (but not exhaustive) gauge of quality would be the standards prescribed by the relevant statutes. The fact that the 7% ash limit stipulated in Reg 227 is an international standard that is accepted by many countries fortifies our conclusion that it is an appropriate and even convincing standard to apply on the facts. It is clear, as we have noted above, that Reg 227 had been breached.

66 Mr Palaniappan argued that the appellant had *not* proven that the ginger slices were unfit for human consumption because Reg 227 was a standard that governed merely the *quality,* and not the *safety,* of the ginger slices. Therefore, the fact that the ginger slices had an ash content exceeding 7% did not *per se* render them unfit for human consumption.

67 Two points may be made in response to this argument. First, even if we accept Mr Palaniappan's contention that Reg 227 was merely an indicator of quality, and not safety, it does not in any way change our finding that the standards with respect to *quality* prescribed by Reg 227 had been breached and therefore that the ginger slices were of unsatisfactory quality and, consequently, that the appellant was entitled to succeed.

68 Second, we are unable to accept the artificial distinction that Mr Palaniappan attempted to draw between quality and safety, for surely one of the main purposes of providing *quality* standards in the Food Regulations is to protect the *safety* of the public that will ultimately consume those food products. The preamble to the SFA provides that the SFA is an Act for "securing wholesomeness and purity in food and fixing standards for the same; for preventing the sale … *of articles dangerous or injurious to health*" (emphasis added). Thus, s 13 of the SFA provides criminal sanctions for persons who sell food that contain a greater proportion of any substance permitted by the Food Regulations. The presumption must therefore be that the standards prescribed in the Food Regulations not only govern the quality, but also the *safety* of the food products for human consumption. Thus, in the absence of any evidence from the respondent of any other applicable standards to guide us in assessing quality, we find Reg 227 to be an acceptable gauge of quality in so far as the ash percentage in ginger is concerned. Indeed, it is significant that Mr Palaniappan, whilst making his argument, nowhere suggested an appropriate alternative by which we could assess the safety of the ginger slices.

69 We should add that even if we were to accept Mr Palaniappan's argument that the ginger slices were *not* sold as spices or condiments (*ie*, that Reg 227 does not apply), and merely as food, we would still hold that the ginger slices were not fit for the purposes for which they were supplied and therefore of unsatisfactory quality. Ginger used in the form of spice or condiments are typically used in small quantities. If the permissible ash content prescribed for ginger used as spice or condiments (which must be for consumption as a food product) is 7%, then, *a fortiori*, the permissible ash content for ginger used as a general food product must be lower than 7% because it will typically

be consumed in greater quantities. In this regard, ginger slices that contained ash content of between 14% to 20% (as evidenced by the test results tendered by the appellant, which was not controverted by the respondent by tendering its own alternative test results, and which is accepted by this court) cannot be fit for the purposes for which they were supplied.

Section 14(2B)(d) — safety

70 As explained above (at [68]), we are unable to accept Mr Palaniappan's argument that the Food Regulations govern only the quality, and not safety, of food products. In our view, while Pt IV of the Food Regulations obviously regulates the quality of food, there is no reason why it should not also cover the safety of food. As Reg 227 had been breached, we find that not only were the ginger slices of unsatisfactory quality, but that they were also *prima facie* unsafe for consumption. As stated above, it is always open to the respondent to prove otherwise but since the respondent had not conducted any scientific analysis of the ginger slices for either its quality or safety, our finding that the ginger slices were unsafe for consumption stands.

Conclusion on s 14(2) claim

71 We therefore find that the ginger slices were not fit for the purpose of being used as a food product and were not safe for consumption. The ginger slices were thus of unsatisfactory quality and the appellant is entitled to succeed on this claim.

Section 14(3) SOGA – was there a breach of an implied term of fitness for a particular purpose?

72 The third issue raised by the appellant was that the ginger slices were not reasonably fit for the particular purpose for which they were required and therefore the implied term under s 14(3) of the SOGA had been breached. To recapitulate, s 14(3) provides as follows:

> 14(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known —
>
> (a) to the seller…
>
> 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.

73 Section 14(3) assumes that where the buyer makes known to the seller any particular purpose for which the goods are being bought, there is reliance on the seller. The onus then falls on the seller to prove that there was no such reliance, or that the reliance was unreasonable in the circumstances: *Compact Metal Industries Ltd v PPG Industries (Singapore) Ltd* ([58] *supra*) at [108].

74 There are three sub-issues to address:

(a) whether the appellant had made known to the respondent the particular purpose for which the ginger slices were bought;

(b) if so, whether the respondent had shown that the appellant did not rely on the

respondent's skill and judgment, or that it was unreasonable for the appellant to so rely; and

(c) if not, whether the appellant had shown that the goods were not reasonably fit for such particular purpose.

Had the appellant made known to the respondent the particular purpose for which they required the goods?

75 The respondent contends that the particular purpose for which the ginger slices were purchased was not made known by the appellant. However, the Judge found that the respondent was more likely to have understood that the ginger slices were bought by the appellant for use in food products rather than for medicinal or other purposes (see GD at [34]).

76 It is trite that the words "particular purpose" in s 14(3) are not used in contradistinction to a "general purpose" and certainly do not mean that only a "special purpose" would be sufficient. Rather, they are used in the sense of being a "specified" or "stated" purpose: *per* Lord Wilberforce in *Henry Kendall* ([15] *supra*) at 490. In the same case, Lord Pearce also observed (at 482–483):

> Almost every purpose is capable of some sub-division, some further and better particulars; but a particular purpose means a given purpose, known or communicated. It is not necessarily a narrow or closely particularised purpose … A purpose may be put in wide terms or it may be circumscribed or narrowed.

77 If no purpose is indicated, it would be assumed that goods were ordered for their normal purpose: see *Benjamin's Sale of Goods* ([46] *supra* at para 11-055). Thus, Lord Morris held in *Henry Kendall* ([15] *supra* at 465):

> There is no magic in the word "particular". A communicated purpose, if stated with reasonably sufficient precision, will be a particular purpose. It will be the given purpose. Sometimes the purpose of a purchase will be so obvious that only one purpose could reasonably be in mutual contemplation. An only purpose or an ordinary purpose may therefore be a particular purpose … .

78 In this regard, it has also been observed that, "[a] commonplace purpose … need not be expressly communicated to the seller, who is likely to assume that it is the buyer's purpose anyway unless informed to the contrary: see *Bridge* ([46] *supra* at p 323).

79 The normal or commonplace purpose of ginger slices would, in our view, be for use as a food product as a spice. There was thus no need for the appellant to *expressly* convey this purpose to the respondent as s 14(3) provides that the buyer may make known to the seller such a particular purpose "by implication". Under s 14(3), the ordinary purpose was therefore also the particular purpose for which the ginger slices were required.

80 We find that the Judge's conclusion on this point was an eminently sensible one in light of all the facts and circumstances of the case. The parties were, in fact, engaged in an ongoing trading relationship for four years prior to the incident, and during this period of time the appellant purchased numerous quantities of spices from the respondent. In fact, the respondent had, in its Answer to Interrogatories dated 24 February 2006, itself admitted to the fact that the appellant was an importer of numerous spices, including ginger. Further, given that the appellant is aptly named "National *Foods*", we find it somewhat disingenuous for the respondent to now argue that it had no idea whatsoever that the appellant purchased the ginger slices for use in food products.

Had the respondent disproved reliance?

81 It should be reiterated here that once it has been shown that the particular purpose for which the goods were required was made known to the seller, the onus is on the seller to prove that the buyer did not rely, or that it was unreasonable for the buyer to rely, on the seller's skill and judgment. As is stated in a leading textbook (see *Atiyah* ([54] *supra*) at p 200):

> It is now clear that the onus on the buyer in the first instance is only to show that he has made known the purpose for which the goods are being bought. Reliance will then be presumed unless it is positively disproved, or unless the seller can show it to have been unreasonable.

In a similar vein, another leading textbook put it as follows (see *Bridge* ([46] *supra*) at p 334):

> The wording of the present section 14(3) appears to create a presumption of reliance since liability is negatived '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'.

Reference may also be made, in this regard, to the observations of Lord Pearce in *Henry Kendall* ([15] *supra*) at 483.

82 In *Henry Kendall* ([15] *supra*), Lord Wilberforce expressed the view (at 490–492) that the fact that both the buyer and seller are members of the same commodity market did not *of itself* show that the buyer did not rely on the seller, although it no doubt tended to militate against the inference of such reliance. As the learned Law Lord explained, to hold otherwise would be "to convert a decision on fact into a rule of law and to ignore the fact that not all sales, even on a given market, not to mention sales on different markets, bear the same character or involve the same incidents" (see *ibid* at 491).

83 Similarly, Lord Morris observed (at 466):

> With respect I cannot agree that the fact that buyers and sellers are members of the trade association inevitably or generally brings it about that no reliance is placed on the skill or judgment of sellers. The contrary may well be the case. Nor does the fact that on arrival of the goods there will be or may be analysis of them, negative a reliance on skill or judgment. The cattle food market was, in Sellers, L.J.'s phrase, "an informed market". *Those who were selling would themselves have had to acquire*. *They would exercise their judgment and their skill in making their purchases.* They would decide whether or not to buy from a new supplier or from a new source. They would decide whether to acquire some new variety. *The buyers from them might have added confidence because they would feel that they could rely on a fellow member of their association*. [emphasis added]

Reference may also be made to the observations of Lord Pearce (see *ibid* at 483–484).

84 On the facts, the appellant and respondent were both specialists in the same market, namely, the spice market. Nevertheless, we find that the respondent had failed to discharge its onus of proving that the appellant did not rely on the former's skill and judgment, or that it was unreasonable for the appellant to so rely. The respondent as seller was itself a buyer and, in the words of Lord Morris ([83] above), would have had to exercise its judgment and skill in making the purchase of ginger slices from China. Importantly, the respondent describes itself as an experienced trader in spices and surely this must have given the appellant an added degree of confidence that the respondent would exercise its skill and judgment in the purchase of quality ginger slices from China.

We therefore find that it is an implied term of the Contracts that the ginger slices would be fit for the particular purpose for which they were purchased.

Were the ginger slices reasonably fit for the particular purpose?

85 The final question to address is whether the ginger slices were reasonably fit for the particular purpose of usage in food products. The correlation between ss 14(2) and 14(3) of the SOGA has already been explained above. To recapitulate, there is a high degree of overlap on the present facts between the standard required by ss 14(2) and 14(3) because the particular purpose for which the appellant required the goods is identical to the common purpose for which the ginger slices are supplied, *viz*, for use in food products. Earlier, we found that there had been a *prima facie* breach of s 14(2) and that the respondent had failed to adduce evidence to prove otherwise. The same reasoning would apply here. We therefore also conclude that the term implied by s 14(3) of the SOGA has been breached.

Conclusion

86 While counsel for the respondent exerted great efforts on behalf of his client, we were ultimately not persuaded by his arguments. The respondent had supplied ginger slices that were of unsatisfactory quality and were not fit for the particular purpose for which the appellant required them. The implied terms under ss 14(2) and 14(3) of the SOGA had thus been breached. The appeal is therefore allowed with costs and with damages to be assessed. The usual consequential orders are to follow.