

Biomedica Pharma Pte Ltd (formerly known as Malaysia Chemist Pte Ltd) v TAC Distribution
Pte Ltd (trading as Trane Singapore) (Amcrotech Pte Ltd, third party)
[2013] SGHC 2

Case Number : Suit No 143 of 2009 (assessment of damages)
Decision Date : 10 January 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Mansurhusain Akbar Hussein (Jacob Mansur & Pillai) for the plaintiff; Niru Pillai (Global Law Alliance LLC) for the defendant Michael Chia Peng Chuang (Pereira & Tan LLC) for the third party.
Parties : Biomedica Pharma Pte Ltd (formerly known as Malaysia Chemist Pte Ltd) — TAC Distribution Pte Ltd (trading as Trane Singapore) (Amcrotech Pte Ltd, third party)

Contract – Remedies – Damages

10 January 2013

Choo Han Teck J:

1 On 8 November 2010 I handed down a judgment in favour of the plaintiff against the defendant for breach of contract and ordered damages to be assessed. The defendant's counterclaim and their third party action were dismissed. The plaintiff leased a factory building for the purpose of their pharmaceutical business. The defendant was a specialist in air-conditioning systems and contracted to design and install a specialised system for the plaintiff's factory. The actual installation was carried out by the third party.

2 The assessment of damages was heard by me in July 2012 and on 24 September 2012 I gave my verdict on the quantum in respect of the plaintiff's claims. In the main, I agreed with the defendant and awarded the plaintiff \$135,000 being a reimbursement of the sum paid by the plaintiff to the defendant. The payment was not disputed but the defendant denied that there was a failure of consideration. It was clear that the defendant had failed to hand over a system that complied with the contract. The defendant's breach resulted in the Health Sciences Authority withholding the grant of a licence to the plaintiff to use the factory as a dry laboratory. I also awarded the plaintiff \$50,000 in general damages.

3 Mr Niru Pillai's argument before me was that the plaintiff should not be awarded the refund and still recover general damages for breach. I agreed with Mr Pillai in so far as all the other claims made by the plaintiff were concerned; they were special damages that had not been pleaded and thus could not be awarded. However, the damages that the plaintiff suffered by reason of the breach by the defendant had an element which was clearly proved. That was the payment of the \$135,000. There was also an element of general damage that was not amenable to precise assessment — the inconvenience and trouble that the plaintiffs endured by reason of the breach. In this case, I did not assume that the plaintiff's loss in business could be wholly attributed to the defendant's breach. The breach was a probable contribution to the plaintiff's closure of its business. But how does a court value this? This element requires the court to take into account the nature of the business, the consequence of the breach, the nature and size of the contract, and the nature of the breach.

Taking all that into account, I added another \$50,000 to the plaintiff's claim, making the total award of damages \$185,000.

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