

Tri-Oceanic Pte Ltd v Chun Cheng Fishery Enterprise Pte Ltd
[2005] SGHC 56

Case Number : Suit 17/2004
Decision Date : 18 March 2005
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : R S Bajwa and Rajvant Kaur (ASG Law Corporation) for the plaintiff; Lim Tong Chuan (Loo and Partners) for the defendant
Parties : Tri-Oceanic Pte Ltd — Chun Cheng Fishery Enterprise Pte Ltd

*Contract – Contractual terms – Defendant purchasing fish and seafood products from plaintiff
– Parties agreeing that sale on "as is" basis – Parties agreeing that neither quantity nor quality in issue – Plaintiff making claim for unpaid goods – Defendant alleging that fish delivered did not match quality set out in contract – Whether defendant liable for unpaid goods*

18 March 2005

Choo Han Teck J:

1 This was a claim by the plaintiff for unpaid goods. The plaintiff company, in the process of winding up its business of selling fish and fish products, offered to sell its remaining stock in its entirety to the defendant, who was also in the same business as the plaintiff. The defendant agreed and a written agreement dated 5 March 2003 ("the March contract") was drawn up and the defendant signed it the following day. It was a simple and straightforward contract. The agreed price (which was not in dispute) was the cost price of the plaintiff, ascertained according to the plaintiff's book value. The defendant was to buy and take delivery of all the fish and seafood products, which were set out in the annexure to the March contract, by 31 March 2003. There was also no dispute as to the annexure. The March contract further provided by cl 8 that:

The [defendant] agrees not to claim any reduction in price or any other considerations from [the plaintiff] due to quality of the product being sold. All product is being sold 'as is' without any quantities other than for weight.

2 Subsequent to the agreement, the plaintiff also agreed to sell and the defendant to buy several shipments of fish that were arriving at port after the March contract ("the New Landings"). The plaintiff had offered the New Landings to the defendant on the same terms as the March contract. The subsequent agreement in respect of the New Landings was concluded orally between the defendant's chairman, Lim Chao Feng, and Chen Hsien Chang, a director of the plaintiff.

3 The fish and all fish products under the March contract and the oral agreement were fully delivered by 31 March 2003. The plaintiff claimed that the total due to it was US\$3,195,116.32. The defendant contended that the amount owing was only US\$2,918,392.27. That was the amount paid to the plaintiff. The plaintiff's claim in these proceedings was for the balance of US\$276,724.05. In the course of the trial, the plaintiff accepted that there were some errors in respect of some of the invoices and after giving credit to the defendant in respect of the errors, the plaintiff claimed that the amount due to it was US\$274,985.07.

4 The dispute itself was straightforward. The defendant's case was that the plaintiff failed to deliver all the fish stated in the annexure to the March contract. However, it transpired that what it

was in fact saying was that some of the fish delivered did not match the quality set out in the annexure. It will be useful to note that the parties agreed that there were three gradings of fish. There were the "sashimi" grade, the "non-sashimi" grade, and the "LF" grade, the latter two also referred to as the "A" and "B" grades respectively. It was contended that only "sashimi" grade fish were suitable for making sashimi dishes. The defendant's case was that when the fish were delivered, the defendant's tally clerks formed the view that some fish described as "sashimi" grade were in fact "A" grade, and some "A" grade fish were in fact "B" grade. Consequently, the defendants calculated the price of the fish based on the description it labelled on the fish.

5 The defendant's assertion that the plaintiff did not deliver all the fish in conformity with the annexure was, in my view, another way of saying that the fish delivered did not meet the quality described. Mr Lim, counsel for the defendant, submitted that the defendant was not quarrelling about the quality, but the description. However, I am unable to accept this argument because it was not a case in which a seller agreed to deliver salmon but delivered cod instead. Where the complaint was that the fish delivered was not of "sashimi" grade, but the lower "A" grade, that complaint related to quality. In the circumstances, the defendant was bound by cl 8 of the March contract and the more general "*caveat emptor*" principle.

6 Firstly, the defendant knew that the plaintiff was making a clearance sale. For that reason, the March contract provided that the price would be at the plaintiff's book-value cost. Secondly, the bulk of the fish were in the plaintiff's warehouse in frozen form. The defendant contended that it did not inspect the fish before signing the March contract. The plaintiff disputed that; but it was, in my view, irrelevant whether the plaintiff or the defendant was right on this point because the defendant ought to have insisted on an inspection if it was not certain about what fish it would receive. Thirdly, the delivery was to take place not within a day or two but over a period of two to three weeks. The defendant was an experienced fish supplier and must know that some deterioration was likely to take place. Fourthly, the sale was on an "as is" basis, and the plaintiff, in fact, delivered 77 tons more fish than contracted. That, ironically, led to a complaint by the defendant that its warehouse was full and could not receive the additional fish.

7 It was not disputed that the defendant's employees who accepted delivery made an assessment to determine whether the physical stock delivered was of the same quality as that described on the delivery list. I accept the plaintiff's evidence that the difference in quality between two grades can be very subjective. If the defendant took the view that quality, description, and fitness for purpose were important conditions, it ought to have rejected the fish that did not conform, but it did not. Having accepted them, the defendant cannot revert weeks later to say that the fish did not conform to quality, description, or fitness for purpose.

8 Mr Lim, counsel for the defendant, submitted that the plaintiff did not adduce any evidence to show what was meant by "quality", and whether the difference in grade was a question of quality. He submitted that, on the other hand, the defendant had, through the evidence of witnesses like Tan Lay Hoon, the vice-president of the defendant, and Peter Teng, a fish contractor of ten to 20 years' experience in the fish industry, shown that the plaintiff's fish were often wrongly graded. The question as to whether a difference in grade was a question of quality was a matter for the court, and not for the experts. In so far as the evidence of Tan Lay Hoon and Peter Teng was concerned, the evidence that the plaintiff's employees often graded fish wrongly was, first, a general comment, which, in the context of this case, was irrelevant because the defendant purchased the fish on an "as is" basis. The parties had also agreed in writing that neither quantity nor quality would be an issue. The price would be according to weight only. These were express terms of the contract. The general evidence of Tan Lay Hoon and Peter Teng was wholly irrelevant because they were not

present at the times the fish were delivered. Mr Lim referred to the annexure as describing the fish by species, size and grade, and argued that these were important terms. However, the evidence showed that the annexure was used to identify the total fish as well as the weight of the fish sold. It was a convenient checklist for both parties. The operative terms were found in the March contract. There, only weight was of relevance.

9 Mr Lim relied on s 55(2) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) which provides that:

An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent with it.

Mr Lim, therefore, argued that even if the contract excluded quality, it did not exclude the implied condition as to description and fitness for purpose. The same defects in the defendant's case hindered them where s 55(2) was concerned. The complaint of the defendant was a complaint as to quality. On the evidence, and in the context of this case, the description would be a reference only to the type of fish. Although the defendant had pleaded that some of the fish were not fit for processing or consumption, the evidence before me was insufficient to convince me. The defendant relied strongly on the evidence of Phang Yan Chin, its operations and cold store manager. He testified that in his view, some of the fish delivered were wrongly graded and that he and his colleague, Tan Kui Heng, noted the difference in grade on the tally sheet. But due to the confused circumstances in which the fish stock was delivered, Mr Phang stated in his affidavit of evidence-in-chief that he "was not able to tell which bin belongs to which item under the consolidated list". I am, therefore, not satisfied on the facts that the defendant had proved that the fish were of different quality, description or fitness. However, it will be noted that this exercise was really a red herring because the contract was a clearing-out sale that expressly provided that the fish were sold "as is" with no reference to quality, description, or fitness for purpose. A "non-sashimi" grade fish could still be used for other purposes. It was a description of quality in this context. It was not proved that the defendant would be selling all the "sashimi" grade fish for the purpose of making sashimi. The intention of the parties in this contract was to clear the plaintiff's stock at cost.

10 For the reasons above, the plaintiff's claim was allowed and judgment was entered in the sum of \$274,985.07. The defendant's counterclaim was dismissed.