

HONG KONG / JUDGMENT

UNIBO TRADING LTD v. COOL TECH LAUNDRY LTD

COURT

Court of First Instance

DECIDED

14 May 2007

CASE / FILE NUMBER

HCA16/2006

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bjbj HCA 16/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE ACTION NO. 16 OF 2006 BETWEEN Unibo trading limited Plaintiff and COOL TECH LAUNDRY LIMITED Defendant Before : Hon Sakhrani J in Chambers Date of Hearing : 14 May 2007 Date of Judgment : 14 May 2007 J U D G M E N T AUTONUMOUT This is an appeal from an order of Mr Registrar Chan given on 4 April 2007. As I understand it, the defendant wishes to call three expert witnesses and the Registrar has limited the parties to the calling of one expert witness each. By his order made on a checklist review the Registrar gave leave to the plaintiff and the defendant to file and exchange textile expert reports within 63 days from the date of the checklist hearing. He limited the calling of the expert to one expert witness at the trial. AUTONUMOUT The defendant wishes to call two more experts. The first, as I understand it, the defendant wishes to call an expert to give evidence on statistics on the examination of textile products and the defendant also wishes to call an expert to give evidence on trade custom. AUTONUMOUT As to the expert on statistics on the examination of textile products, I bear in mind that the test as to whether or not expert evidence should be given is one of necessity, relevance and probative value (Lam Lai Ying v. Choi Min and Min Xin Insurance Co. Ltd. [2006] 3 HKLRD 572). AUTONUMOUT Nothing that Mr Hung, on behalf of the defendant, has said persuades me that such an expert to give evidence on statistics on the examination of textile products is either necessary, relevant or of probative value for the trial. It seems to me that it would be a matter for the trial judge to determine whether the goods that were washed and dyed by the defendant were defective as alleged by the plaintiff. That is a matter for the expert to give evidence on goods that had been tested including samples, and the goods that were eventually delivered after washing and dyeing by the defendant. I do not see how an expert on statistics on how textile products are examined can assist. AUTONUMOUT As regards an expert on trade custom, as I understand it, the amended defence and counterclaim pleads under the particulars of paragraph 4(b)(iii) that there was a trade custom that the submission of samples should be divided into 2 stages. Firstly, colour samples or shade bands should be submitted for Next s approval and secondly, that there should be the 1st bath of the samples to make sure that the garments when dyed in bulk should correspond not only with the colour requirement but satisfy

other quality requirements as colour fastness, tensile strength and slim slippage. It is pleaded that until the plaintiff approved the samples there would be no contract between the plaintiff and the defendant. AUTONUMOUT It is the plaintiff s case that the samples were submitted to Next for approval and that they were approved. It was only after approval of the samples that the washing and dyeing occurred. I do not see how it can be said that any evidence on the trade custom that I have mentioned is of any probative value at the trial. The defendant s case is that samples were submitted for approval before it embarked upon washing and dyeing. The plaintiff s case is that samples were approved. I really cannot see how a trade custom which is pleaded that there should be no contract until approval is of any relevance when it is accepted by both parties that there was a contract between them. AUTONUMOUT It seems to me that the Registrar was right to refuse the order sought by the defendant to call two additional experts and I would dismiss the appeal. (Arjan H. Sakhrani) Judge of the Court of First Instance, High Court Mr Ho Chee Choi, Jimmie, instructed by Messrs Liu, Chan and Lam, for the Plaintiff Mr Samson Hung, instructed by Messrs Dominic Y. K. Lai & Co., for the Defendant PAGE - A B C D E F 1udk 1udk C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V (#p# (#p# (#p# r p# r p# (#p# "@AB9D 7 ,M +w6. / Jz @m2z]C]6 %gVl^ uxB26I]C]6 %gVl +w6. & 6" abc-Sak-HCA.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 27 October 2026 · Esheria