Legal Update

David Lim & Partners

Liability of Manufacturer to ultimate user

[for defective products which causes injury and damage]

Introduction

1. David Lim & Partners LLP was recently successful in defending a French manufacturer in a case arising from loss and damage amounting to S$8.6 million as a result of fires in one of Singtel's data centre complexes. In the High Court decision of Sato Kogyo (S) Pte Ltd and another v Socomec SA [2012] SGHC 76 ("the Judgment") released on 11 April 2012, the High Court dismissed the claim by the plaintiffs with costs. The Judge also made various findings which will affect a manufacturer.

About this Case

2. On 27 June 2007 at about 8.20 pm, a fire occurred on Level 7 of the Singapore Telecommunications Limited's ("SingTel") Kim Chuan Complex ("the Complex"). A second fire broke out on the same floor in the early hours of the morning on 28 June 2007. The fires caused damage to several floors of the Complex.

3. The second plaintiff, Singtel, was the lessee of the Complex. The first plaintiff, Sato Kogyo (S) Pte Ltd ("SKS"), was the main contractor employed by SingTel to carry out certain works on the Complex. As part of the works, SKS installed Uninterruptible Power Supply ("UPS") units into the Complex. Singtel had purchased and ordered the installation of these UPS units as a protection against power outages for its data centre. The defendant, Socomec SA, was the manufacturer of the UPS units.

4. The fire broke out during infrared thermal scanning tests conducted on 27 June 2007 on 8 UPS units which had been installed into Level 7 of the Complex. At that point in time, the Complex was in SKS's possession even though the works were more or less completed. The infrared thermal scanning tests were one of the final steps that had to be taken before the Complex could be handed back to Singtel.

5. The plaintiffs sued the defendant in May 2009 for damages amounting to about S$8.6 million. The plaintiffs alleged that the fires were caused by a particular defective UPS unit. The defendant denied that its UPS unit was defective or that its UPS unit caused the fires.

6. The High Court dismissed the plaintiffs' claim with costs and held that they had not proven that the cause of the fires was due to the defendant's UPS unit or a defect within that UPS unit.

A Manufacturer is liable to the ultimate user if its product is defective due to its negligence

7. While the Judge found in favour of the French manufacturer in this case, she also held that generally, a manufacturer is responsible to (owes a duty to) the ultimate user of his product for any physical loss or damage caused to the user as a result of any defect in the product due to the manufacturer's negligence.

8. This principle stems from the famous Scottish case of Donoghue v. Stevenson [1932] A.C. 562, in which the manufacturer of ginger beer was held to be liable to the plaintiff for her stomach ache and nervous shock when a decomposed snail was found in the bottle of ginger beer that she had bought and drank from.

The Manufacturer does not need to know the existence or identity of the user or have a contract with him

9. In this case, it was argued that the French manufacturer did not know the existence of SKS (the order to the manufacturer for the UPS was from SKS's subcontractor). The High Court took the view that it does not matter if the manufacturer is not aware of the existence or identity of the ultimate user and had no contractual relationship with him. If a manufacturer

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could reasonably foresee the possibility of his defective product causing damage to third parties, he will be liable to them.

The standard of care of a Manufacturer is to carry out the necessary tests

10. The Judge found that the standard of care of a manufacturer is "the standard of an ordinary skilled man exercising and professing to have special skills required in that situation". In other words, the standard of an ordinary manufacturer claiming expertise in the manufacture of such a product.

11. The court found that the French manufacturer had not satisfied its standard of care as a manufacturer because even though they had performed a standard factory test on the UPS at its factory (the UPS passed all the tests), it had not performed an additional, more stringent test which it had agreed to perform. The Judge was of the view that manufacturers must be obliged to carry out the test which fulfills a higher standard of care at all times.

12. What this seems to mean is that if a manufacturer had agreed with his customer to perform an additional more stringent test, a failure to do so may well amount to a breach of its standard of care as an ordinary skilled manufacturer. By the same token, if there was no agreement to perform an additional, more stringent test other than the standard factory test, then having performed that standard factory test, the manufacturer would have satisfied the standard of care required of him.

Duty to activate Fire Extinguishment System

13. In the Judgment, the court agreed with the defendant that the damage to the Complex would have been substantially reduced if the plaintiffs had armed the FM 200 fire extinguishment system ("FM 200") during the infrared thermal scanning on 27 June 2007. The court found that the plaintiffs were negligent in not arming the FM 200 system before they commenced their infra-red thermal scanning tests as they would have known that such testing would generate high heat and there might be a risk of fire.

14. Thus, for premises undergoing construction works, if the premises have an operational fire extinguishment system in place, the fire extinguishment system must be armed if testing or other activities on the premises carries with it a risk of fire. A failure to do so may expose the contractor or owner to contributory negligence for any personal injury, loss or damage caused which could have been reduced by the operation of the fire extinguishment system.

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