



LEGAL BRIEFING

M & J Polymers Ltd v Imerys Minerals Ltd

Burton J, [2008] EWHC 344 High Court - Queen's Bench Division

The Facts

M&J Polymers Ltd ("M&J") and Imerys Minerals Ltd ("Imerys") entered into a contract for M&J to supply dispersants, which are chemicals used in the breakdown of clay and other materials, to Imerys. M&J began supplying dispersants in 1991. A new supply contract was entered into in January 2005 for the supply of 4 dispersants, Jaypol 1183, Jaypol BTC2, Jaypol 1150 and Jaypol 1140.

The contract also, subject to various provisions for termination, that the agreement had a three year minimum term. M&J gave a warranty as to quality and provided that the goods were fit for the purpose that Imerys had made known to them.

The supply contract was terminated by Imerys in May 2006. M&J treated this notice of termination from Imerys as an unlawful repudiation which M&J accepted.

The Issues

1. Whether one of the dispersants delivered by M&J in 2005 was fit for the purpose?
2. Whether Imerys was entitled to refuse to accept any further deliveries of it as from 31 August 2005.

The Decision

On the evidence presented, M&J had only delivered dispersant in accordance with the contractually provided specification. The dispersant was not incompatible with the purpose that Imerys required. Imerys did not allege that the relevant dispersant was in breach of its specification. Had Imerys done so, they would have then, in order to terminate its obligations under the contract had to establish failure to meet the significant specification requirements on more than 2 occasions in any given 3 month period (as required in the contract), given timely notification of such alleged breaches and had them confirmed by an independent analytical laboratory.

There were 2 uses for the dispersant: refining and slurring. Even Imerys did not suggest that the dispersant was unfit for its purpose in relation to the refining purpose. In addition, there was little evidence of customer complaints regarding the dispersant and all the dispersant supplied was sold on to Imerys' customers.

Comments

This case demonstrates the difficulties associated with proving that a product is unfit for purpose if the product has a number of different uses. In this case, the evidence showed that all the dispersant supplied was sold and there were few complaints from the customers.

Charlene Linneman
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