

LOCAL COURT
New South Wales
Downing Centre Sydney

Jurisdiction: Civil

Parties: Leo Howell, Skye Howell (Plaintiffs)

v

Associated Products PTY LTD (First Defendant)

Paul Sheridan Sengos (Second Defendant)

File number: 2015/106624

Hearing dates: 21 January 2016, 4 April 2016, 11th July 2016

Date of Decision: 16 August 2016

Magistrate: J Wahlquist

Representation: Plaintiffs Woods and Day Solicitors

Mr Bogan Barrister

Defendants : Hassett Lee Solicitors

Mr D M Jay Barrister

Reasons for Decision

- 1 The plaintiffs entered into an agreement with the first defendant for the supply of confectionary to the plaintiffs and the plaintiffs would have the exclusive right to distribute the confectionary to retailers in the Eastern suburbs. The second defendant was the sole director of the first defendant. The plaintiff paid \$55,000 inclusive of GST for the exclusive distribution rights and \$6,015.30 for the initial stock of confectionary. The agreement was signed on the 1 October 2014. The plaintiff commenced to operate the confectionary run but was unhappy about the confectionary supplied by the defendant. On 14th November 2014 the plaintiffs advised the defendants that they sought to terminate the agreement. They sought a refund of the purchase price. The plaintiff claims the right to terminate the agreement on the basis that the defendant's conduct was misleading or deceptive under S 18 of the Australian Consumer Law in relation to their representations about the products they were supplying. The Australian Consumer Law is set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth)

They also argue that there has been a breach of the requirement under Section 19 of the Sale of Goods Act 1923 that the goods would be of "merchantable quality" "fit for the purpose for which they were supplied." They say the breach is of an essential term of the contract and they are entitled to terminate the contract.

Misleading or Deceptive Conduct

- 2 The plaintiff's argue that the misleading or deceptive conduct of the defendants was twofold, firstly that they failed to disclose that the products they supplied would have expired or near expired "Best Before" dates and secondly that they failed to disclose that the products supplied would have tampered Best Before dates.
- 3 Section 18(1) of Australian Consumer Law sets out;

Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The plaintiff argues that there is a deception by the defendants by failure to disclose or silence. The Federal Court in ACCC v Dukemaster Pty Ltd (2009) FCA 689 set out a summary of the principles relied upon as to what can amount to deceptive and misleading conduct. It has been held that conduct likely to mislead or deceive can include silence if there was a reasonable expectation that if a relevant matter existed it would be disclosed. Dukemaster followed decisions in Demagogue Pty Ltd v Ramensky (1992) 39 FCR 31 and Miller & Associates Insurance Broking Pty Ltd v BMW Australia Finance Ltd (2010) 241 CLR 18.

4 The first factual issue for consideration is whether there was a failure by the defendants to disclose that a proportion of the products supplied would be near or past their Best Before dates and that Best Before dates were required on these products. That the failure of the defendants to advise the plaintiffs that the products was close to or past the Best Before dates was misleading and deceptive.

5 The Australia New Zealand Food Standards Code states in regard to date marking on food;

“Note In this Code (see section 1.1.2—2):

***best-before date**, for a food for sale, means the date up to which the food for sale will remain fully marketable and will retain any specific qualities for which express or implied claims have been made, if the food for sale:*

(a) remains in an intact package during its storage; and

(b) is stored in accordance with any storage conditions applicable under Standard 1.2.6.”

“1.2.5—3 Food for sale must be date marked on labels

(1) For the labelling provisions, the date marking information is:

*(a) if there is a *use-by date for the food—that date; or*

(b) otherwise—any of:

*(i) the *best-before date of the food; or*

(ii) for bread that has a shelf life of less than 7 days:

(A) the best-before date; or

*(B) the *baked-for date; or*

*(C) the *baked-on date.*

(2) The date marking information is not required if:

*(a) the *best-before date of the food is 2 years or more after the date it is determined;”*

The Code sets out that Food for sale must be date marked on labels unless the best before date of the food is 2 years after the date it is determined.

Labelling is not required on a package with a surface area less than 100cm (Standard 1.1.1)*

Standard 1.2.1 – 6 sets out when food is not required to bear a label and it does not set out that confectionary such as supplied here is excluded.

Standard 1.2.1-8 sets out what information the label is required to obtain and includes at” 1.2.1-8 (1) (f) date marking information (see section 1.2.5—3);”

6 I am satisfied that the Australian and New Zealand Food Standards does require date marking on the goods supplied by the defendants to the plaintiff. The only possible exception that the products could fall into would be if the product was good for 2 years or more. The fact that the manufacturer provided a Best Before date is because the manufacturer determined that one was required.

7 The Australian and New Zealand food standards is governed by the Food Standards Australia New Zealand Act 1991 and in New South Wales the

Code is enforced by the NSW Food Authority which gains its power under the Food Act 2003. Section 21(2) of the Food Act 2003 states;

“A person must not sell any food that does not comply with a requirement of the Food Standards Code that relates to the food.”

I accept that the defendant would be bound to supply food in accordance with the code and that the plaintiff would be entitled to expect that he would do so. He is bound under his contract by Clause 29 of the Agreement to co-operate with the plaintiff and the supply of goods (required under Clause 6 of the Agreement) would reasonably be expected to comply with an enforceable food standard.

8 The defendant has argued that the plaintiff has not established that the products were required to have a Best Before marking. I think this argument is contrary to Standard 1.2.5. The clear inference is that if there has at Manufacture been a Best Before date placed on the goods it is because one was required because the foods best before date is less than 2 years after manufacture. I am satisfied that if there was a Best Before date on the goods that was because it was required to be there. The defendant's argue that the Australian Standards are not legally binding documents. As I understand this argument the defendants are referring to the Explanatory Guide prepared by the NSW Food Authority which explains the Australia New Zealand Food Standards Code (Annexure B to Exhibit 6) I am satisfied that the Australian New Zealand Food Standards Code is enforced by the Food Act 2003 and Regulations. What is set out in the Explanatory Guide explains the code which is enforceable.

9 Goods with Best Before date that have passed are allowed to be sold is not in dispute. See Standard 1.4.

10 The Plaintiffs say they were misled about the products being close to or after Best Before dates. They say they should have had this disclosed to

them if this was the business model they were being sold by the defendant. The second defendant said that this was part of the first defendant's business model that they sell or distribute products past their best before date. (Transcript at page 83 lines 39-41) It is set out in the Explanatory Guide (Annexure B to Exhibit 6) that "A food that has passed its 'best before' date is still be perfectly safe to eat, but its quality may have diminished" the consequence of which must be that its marketability has also decreased. This was accepted by the second defendant in his evidence, and also Mr Kalegaris who gave evidence for the defendant's when he referred to sometimes giving a discount and also advised the plaintiff not to mention it.

- 11 The plaintiff said that at his meeting with the second defendant at his premises on 12 September 2014 that the goods being close to or after the Best Before date was never mentioned. He says that when he asked the defendant how he was able to obtain such high margins he was told that the goods were copies of popular items and end of the line stock. He says that he was not aware that the some goods would be past their Best Before dates until after he had entered the agreement and received the first delivery when he saw that a number of the items were past their Best Before Date. He then sent an email to the second defendant asking about this fact and was told "We do not to mention it. If it comes up we explain the facts- some take it some leave it" (Exhibit 3 Page 130)
- 12 The defendant said in his affidavit (Exhibit 9) that the plaintiff attended a meeting at the first defendant's premises and was told that what he would be supplied were displayed and that he was shown them and that the plaintiff spent about 20 minutes examining them. He said the Best Before dates were on display on those products. He said that some of the stock on display was older stock with Best Before dates that had passed. He says that when the plaintiff asked him how he was able to obtain such high margins he said;

“The skill is in picking product that you can buy cheaply, and then sell for full price or nearly full price. This is the range you will be selling which as you can see includes end of run items and stock that is near or past best before dates. But this stock is still good to sell. It’s not like dairy or fresh food products”. (Exhibit 9 Paragraph 27)

- 13 In his evidence when cross examined the second defendant described this conversation differently;

“Q. You say do you that you specifically told Mr Howell that products were past their "best before" dates, is that right?

A. From my recollection he actually brought up the date prior to me telling him because he had one of the Jeeps he was playing with that had a date on it that had expired. Then I went into more elaborate details about "Yes that is on a number of them" and I explained to him that was the "best before" use by date.”

Mr Kalegaris who was also present at the meeting did not recall Best Before dates being raised. (Exhibit 10 Paragraph 12)

- 14 The plaintiff relies on the difference in the second defendant’s account as to the raising of the Best Before between his affidavit and evidence to the Court and Mr Kalageris’s evidence which has no recall to argue that the plaintiff’s account of not being told, which he says is supported by his email and reply by the second defendant is the true situation to prove that it was never mentioned.

- 15 The evidence that is undisputed is that the plaintiff attended the defendant’s premises and was shown the type of products he was to sell. The plaintiff was free to inspect the products and on the evidence he did look at some of the products. The plaintiff was new to this sort of business and had no experience in the industry. He did ask how the defendant was able to make such good profit margins. The plaintiff says he was told by the second defendant; “The products are copies of popular items and

some products are end of line stock. I am able to obtain the stock for cheaper than ordinary. I am honest and generous and will pass on those high margins to you” (Exhibit 2 paragraph 18) The plaintiff said that his understanding of “end of line stock” meant products that were no longer manufactured (Exhibit 2 paragraph 19) He denies being given the explanation the second defendant gave evidence about, being that the goods were sometimes close to or past their Best Before dates. The plaintiff relies on his email to the second defendant and the second defendant’s response to that to support that he had not known. If I accept that the plaintiff had not known because he was not told by the defendant, was this misleading and deceptive conduct on the part of the defendant. As previously stated the Higher Courts have held that silence can amount to misleading or deceptive conduct.

- 16 In Miller & Associates Insurance Broking Pty Ltd v BMW Australia Finance Ltd (2010) 241 CLR 18. In a joint judgement French CJ and Keiffel J referred to the words of the decision in Demagogue Pty Ltd v Ramensky (1992) 39 FCR 31 and said;

“Gummow J, who wrote the leading judgment and with whom Black CJ and Cooper J agreed,

“the question is simply whether, having regard to all the relevant circumstances, there has been conduct that is misleading or deceptive or that is likely to mislead or deceive.”

Gummow J referred to the limitation that “unless the circumstances are such as to give rise to the reasonable expectation that if some relevant fact exists it would be disclosed, it is difficult to see how mere silence could support the inference that the fact does not exist”

French CJ and Keiffel J in Miller said;

“Cicero, in his famous essay On Duties, seems to have contemplated such a standard when he wrote

"Holding things back does not always amount to concealment; but it does when you want people, for your own profit, to be kept in the dark about something which you know and would be useful for them to know."

*It would no doubt be regarded as an unrealistic expectation, inconsistent with the protection of that "superior smartness in dealing" of which Barton J wrote in *W Scott, Fell & Co Ltd v Lloyd* that people who hold things back for their own profit are to be regarded as engaging in misleading or deceptive conduct. As Burchett J observed in *Poseidon Ltd v Adelaide Petroleum NL*, s 52 does not strike at the traditional secretiveness and obliquity of the bargaining process. But his Honour went on to remark that the bargaining process is not to be seen as a licence to deceive, and gave the example of a bargainer who had no intention of contracting on the terms discussed and whose silence was to achieve some undisclosed and ulterior purpose harmful to a competitor. The Full Court upheld the decision of the primary judge that a vendor of land had created a clear but erroneous impression in the purchasers that there was nothing unusual concerning access to the land and, in particular, had been silent as to the necessity of a grant of a licence by a statutory authority to enable such access.*

However, as a general proposition, s 52 does not require a party to commercial negotiations to volunteer information which will be of assistance to the decision-making of the other party. A fortiori it does not impose on a party an obligation to volunteer information in order to avoid the consequences of the careless disregard, for its own interests, of another party of equal bargaining power and competence."

- 17 The words in these cases suggest that it must be clear that the party failing to disclose the fact would have been aware that the failure to disclose would affect the other party's decision or at least be likely to affect their decision. The Court must also take into account the circumstances of the negotiation. This was a commercial negotiation and the plaintiff might have sought to make his own enquiry as to exactly what the defendant meant by "end of the line" products. The plaintiff had the

opportunity to inspect the products which were available for him to inspect. There is no evidence of the defendant intentionally not telling the plaintiff in order to deceive or misleading him. I am not satisfied that the defendant can be shown to have been negligent or careless in what he told the plaintiff. The information was available to the plaintiff and he was told the products were "end of line" which could include being after or close to Best Before dates. The failure of the defendant to disclose that products were close to or after best before dates does not amount to misleading and deceptive conduct under Section 18(2) Australian Consumer Law.

- 18 The plaintiff argues that the defendants failure to disclose that they would be supplying products with tampered Best Before dates was misleading and deceptive conduct under S18(1) Australian Consumer Law. There was no dispute that the plaintiffs were never told that they would receive products which had Best Before dates stuck over other best before dates. Evidence was produced of products supplied by the defendants with tampered Best Before dates. In evidence were packets of confectionary where there was a sticker with a Best Before date placed over another sticker with another best before date on it. There was also a packet of confectionary where there was a cut in the plastic surrounding the product and a new Best Before sticker placed over an old Best Before sticker. Also in evidence were displays of confectionary where the outer plastic with potential Best Before stamping on it had been removed. In other instances where outer plastic had been removed, Stamped Best Before dates were unable to be read.
- 19 The defendant's argue that there is no evidence to show that the goods require a Best Before date or that the Australian Standards are legally binding. In Paragraphs 5 and 6 of this Judgement I have referred to the requirements under the Australia New Zealand Food Code for food to be date stamped and that I am satisfied that this was a legal requirement in regard to the products supplied by the defendant to the plaintiff. In regard to the products supplied by the defendant I accept that any product with a

Best Before stamp or sticker apparently placed there by the manufacturer was required under the code to have such a stamp or sticker. In any event once a stamp or label is there Section 18 (1) of the Food Act 2003 makes it an offence to tamper with that label.

18 Misleading conduct relating to sale of food

(1) A person must not, in the course of carrying on a food business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to the advertising, packaging or labelling of food intended for sale or the sale of food.

- 20 The plaintiff was entitled to expect that the products that he was supplied with would comply with the law and that the Best Before labelling would not have been tampered with.
- 21 The second defendant has argued that he was unaware that the Best Before labels had been tampered with and alternatively that where labels had been placed over the top of other labels this was done by the importer or manufacturer not the defendants.
- 22 The second defendant said in his affidavit at Paragraph 50 that new Best Before stickers may be placed over expired stickers as a result of overseas agents and distributors liaising with manufacturers suggesting that stickers be upgraded or extended when there is nothing wrong with the product. He said he had seen stickers placed over other stickers as in this case but it was not done by him. He said that it was likely it was the overseas export agent who was responsible for placing extended stickers over the Best Before date. He went onto say that he was not concerned about Best Before dates as the only consideration for him was the price of the product and the taste. The evidence in the second defendant's affidavit about his awareness of stickers being placed over Best Before

dates was different in the witness box when he said he was not aware of this occurring in Australia.

- 23 There was evidence from the plaintiff about the Best Before date of the "Going Gummy Caps" being close to expiry (exhibit 3 p181) The second defendant agreed to replace them stating that he had a new stock of Gummy Cups with no dates. The evidence was that the plaintiff swapped 68 display boxes. The display boxes came in a carton with the same Best Before date on the outside and without plastic wrapping on the outside of the display box. The individual Gummy Cups either had no Best Before date on the lid or a very faint unreadable date. The returned boxes had been wrapped in plastic. The inference the plaintiff asks the court to draw from this is that the gummy cups were the same as the returned ones not new stock but had had their Best Before dates rubbed off after the plastic packaging was removed. The defendant denied that he had removed or had anyone else remove dates from the Gummy Cups. He said to do this he would have had to handle over 600 Gummy Cups which given they are small value items which would be commercially unfeasible.
- 24 There was evidence of a number of Display boxes having the plastic cut around the Best Before stamp and a new sticker being placed over the top. In each of the cases the Best Before date appeared the same and had the date 30th June 2016 on it. This was despite the fact that the defendant had received the goods from different importers in Australia and the goods themselves had come from different countries. The plaintiff asked the court to infer that they must have been placed there by the defendants and that they were aware that the Best Before dates had been tampered with because they had done it.
- 25 I did not find the evidence of the second defendant believable in regard to his lack of knowledge regarding Best Before stickers being placed over Best Before stamps on his products. His evidence was that he has been in the confectionary business for 40 years and that a niche part of his market in selling products close to or past Best Before dated products.

Given the number of products supplied to the plaintiff with stickers over the top of stamped dates it was impossible to believe that he would not have known about this. It is also impossible to believe that he would not have seen that plastic had been cut thru on display boxes so this could occur. As a supplier of food products he would have known the requirements of the Australia New Zealand Food Code, in particular the requirements for date stamping. Indeed he sent the plaintiff an explanation regarding understanding Best Before dates from the NSW Food Authority. I am satisfied that the second defendant knew that some of the products he was providing to the plaintiff had tampered with Best Before dates. The fact that many of the new labels were identical and were placed over products from different suppliers provides a strong inference that they were placed there by the defendants.

26 The second defendant told the court that sometimes importers change the Best Before dates and that they are “the manufacturer” of the products under Australian law. For this to be a practice engaged in by the importer would seem to be contrary to the Food Act so seems highly unlikely. The plaintiff stated in his affidavit that he contacted the NSW Food Authority who administers the legislation and was told in almost all cases the label cannot be tampered with. (Exhibit 2 Paragraph 125) Even if it was the importer that tampered with the Best Before dates it is conduct about which the plaintiff should have been informed as it changes the nature of the products he is being supplied with. The plaintiff would be left open to a potential prosecution under the Food Act as well as clear question as to the possibility that the product had deteriorated and to not inform him was deceptive conduct.

27 The defendant’s failure to disclose that he would be supplying products whose Best Before stickers were tampered with which could result in the plaintiff facing a prosecution under the Food Act represents a much more serious misrepresentation. The plaintiff should not have had to make enquiries which would anticipate the possibility that the goods he was provided with if sold by him could result in his prosecution. Not advising

the plaintiff of this was clearly creating an erroneous impression of the goods he was contracting to purchase of the magnitude contemplated by the High Court in Miller. I am satisfied that the conduct of the defendants was misleading and deceptive.

Breach of Contract

28 Clause 6 (1) of the Contract requires the defendant to supply the goods to the plaintiff. The inference is that the goods were for the plaintiff to sell in his business. If the goods were defective due to the labels being tampered with they are faulty and cannot be sold. Clause 6 (4) sets out that if products are faulty that on such defect being notified to the defendant the defendant will replace the products. The plaintiff did this in regard to the Gummy Drops. The defendant said to return them and he would replace them with Gummy Drops with no Best Before date. The plaintiff picked up the replacements which were in boxes with the same Best Before date as the rejected Gummy Drops. The replacements had the outer plastic removed and the dates on the individual Gummy Drop containers appeared worn and could not be read. Scrutiny of the products indicated that they were the same product. This was contrary to what the second defendant had told the plaintiff being that he had a new batch come in. Failure on the part of the defendant to replace the Gummy Drops with different Gummy Drops with a longer Best Before date as requested by the plaintiff is a breach of Clause 6 of the Contract.

29 Clause 29 of the contract required the Parties to Co-operate in the carrying out of the agreement. Clause 18 of the Contract required the plaintiff to conduct the business in a "reputable efficient and businesslike manner" The defendant in providing to the plaintiff tampered goods made it impossible for the plaintiff to carry out his business in a reputable way. In making it impossible for the plaintiff to carry out his business in a reputable way the defendant breached his obligation under Clause 29. I am satisfied that the defendant's deceptive conduct resulted in a breach of the contract between the parties.

Liability of the second defendant.

30 The plaintiff also seeks relief against Mr Paul Sengos (the second defendant). The second defendant is the director of the first defendant. He has extensive experience in confectionary sales and has formed and run a number of confectionary businesses over 40 years. It is argued that the second defendant has accessorial liability as he was the person who made the misleading and deceptive statements and was aware of their falsity or deception. For a person to have accessorial liability they must have actual knowledge of the representations made and their falsity (*Yorke v Lucas* (1985) 158CLR 661). The second defendant was the person who the plaintiff dealt with as set out above. The second defendant knew that products were close to or past best before dates, he admitted this in his evidence and in emails written to the plaintiff. I have already set out in Paragraphs 24 & 25 above, that I do not accept that he would not have known that new Best Before stickers were placed over old Best Before stickers given his experience in the industry and due to his specific dealings with the plaintiff. I have already found that this was something which the plaintiff should have been told about for the reasons set out in Paragraph 26 and that failure to do so amounts to misleading and deceptive conduct. The second defendant is liable for the misleading and deceptive conduct alongside the first defendant.

The plaintiff's right to terminate the Contract.

31 Clause 12 (1) sets out that the agent (plaintiff) may by notice in writing terminate the agreement if the defendant is guilty of any breach or non-performance of its obligations and fails to remedy the breach or non-performance within 7 days of a request in writing. The plaintiff sent an email seeking to terminate the contract on 2nd November 2014. (Page 218 Exhibit 3) he set out his reasons which are the reasons relied on here although he did not refer to any specific clauses in the contract. His reasons were rejected by the second defendant by email dated the same

date. (Exhibit 3 Page 221) The plaintiff sent a letter dated 14th November 2014 (Exhibit 3 page 225) purporting to terminate the agreement and the grounds. I am satisfied from all the evidence that the plaintiff did make known to the defendant his complaints regarding the products supplied and gave the defendant the opportunity remedy his complaint. The defendant did not remedy his complaint.

32 I am satisfied that the plaintiff did have grounds under Clause 12 of the Contract to terminate it. In addition there is a right at law to terminate a contract if the breach is serious enough. I am satisfied that the breach itself was of the type which entitled the Plaintiff to terminate because it went to the heart of the contract. The plaintiff was entitled to be supplied with goods that it could lawfully sell. There are a number of cases which support this right. The High Court in Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd (2007) HCA 61 finds that the contract can be terminated when the parties are deprived of a substantial benefit of the contract. (paragraphs 118 and 120). I am satisfied that the ability of the plaintiff to lawfully sell the products supplied by the defendant was of substantial importance to the plaintiff in entering the contract.

33 The plaintiff seeks an order that the Contract be declared void pursuant to Section 243(a) of the Australian Consumer Law. That section says;

*Without limiting section 237(1), 238(1) or 239(1), the orders that a court may make under any of those sections against a person (the **respondent**) include all or any of the following:*

*(a) an order declaring the whole or any part of a contract made between the respondent and a person (the **injured person**) who suffered, or is likely to suffer, the loss or damage referred to in that section, or of a collateral arrangement relating to such a contract:*

(i) to be void; and

(ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);

These orders can only be made on the application of the Regulator as set out in Section 239;

239 Orders to redress etc. loss or damage suffered by non-party consumers

(1) If:

(a) a person:

*(i) engaged in conduct (the **contravening conduct**) in contravention of a provision of Chapter 2, Part 3-1, Division 2, 3 or 4 of Part 3-2 or Chapter 4; or*

*(ii) is a party to a consumer contract who is advantaged by a term (the **declared term**) of the contract in relation to which a court has made a declaration under section 250; and*

(b) the contravening conduct or declared term caused, or is likely to cause, a class of persons to suffer loss or damage; and

(c) the class includes persons who are non-party consumers in relation to the contravening conduct or declared term;

a court may, on the application of the regulator, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2) of this section.

34 I am not satisfied that I have the power to make an order that the contract is void pursuant to Section 239 as this is not an application by the Regulator. I can only make an order under Section 243 if I make an order under Section 239.

35 There is power under Section 236 to make orders for damages;

236 Actions for damages

(1)

*(a) a person (the **claimant**) suffers loss or damage because of the conduct of another person; and*

(b) the conduct contravened a provision of Chapter 2 or 3;

the claimant may recover the amount of the loss or damage by action against that other person, or against any person involved in the contravention

- 36 Chapter 2 contains Section 18(1) which I have found was breached by the defendants. I am satisfied that the plaintiff is entitled to damages. I am satisfied that the plaintiff's damages are the amount they paid for the contract, \$50,000 plus the amount that they paid for the goods purchased from the defendants less the amount of sales, being \$5,160.31.
- 37 In view of the above findings I do not need to address the argument of breach by the defendants of Section 19 of the Sale of Goods Act 1923.
- 38 I find that the first and second defendants should pay to the plaintiffs the sum of \$55,160.31 plus interest from the date of the commencement of proceedings. The defendant's should pay the plaintiff's costs.

