

## **Product liability in Singapore: knowing your rights as a consumer\***

### **I. Introduction**

- 1 Imagine that it is haze season, and you buy an air-purifier to help you and your family through the days of smoke ahead. However, only a few days after its purchase, the air-purifier stops working. To make things worse, the seller refuses to provide a refund. As a consumer, what legal recourse do you have?
- 2 In general, a consumer who purchases a product enters into a contractual relationship with the seller.<sup>1</sup> Thus, either party who breaches the contract would generally be liable for any economic damage suffered. Disputes arising from the transaction would be resolved legally by examining the contractual terms of the transaction. With most consumer goods, however, the terms of the contract may not be explicit. Furthermore, the consumer may be disadvantaged as he would not be able to negotiate the terms of the contract. Unscrupulous businessmen may take advantage of the unequal buyer-seller relationship and use unfair practices to the detriment of the consumer.<sup>2</sup>
- 3 To deal with such matters, the Consumer Protection (Fair Trading) Act (“**CPFTA**”),<sup>3</sup> was enacted in Singapore to regulate contracts and ensure fairness for consumers.<sup>4</sup> Simply put, the CPFTA prevents unfair practices by sellers in general. This short commentary will focus on the CPFTA and the tort of negligence as both sets of laws are viable options for the recovery of loss suffered in a product defect claim.<sup>5</sup>

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<sup>1</sup> See, generally, Andrew Phang (gen. ed.) *The Law of Contract in Singapore* (Academy Publishing, 2012)

<sup>2</sup> See Consumers Association of Singapore Case Studies  
<[https://www.case.org.sg/consumer\\_guides\\_casestudies.aspx](https://www.case.org.sg/consumer_guides_casestudies.aspx)> (accessed 14 February 2020).  
(Cap 52A, 2009 Rev Ed).

<sup>3</sup> See Competition and Consumer Commission of Singapore  
<<https://www.cccs.gov.sg/legislation/consumer-protection-fair-trading-act>> (accessed 13 February 2020)

<sup>5</sup> Other applicable laws on the issue of consumer protection would be the Sale of Goods Act (Cap 393, Rev Ed. 1999) (“**SOGA**”) and the Unfair Contract Terms Act (Cap 396, Rev. Ed 1994) (“**UCTA**”). These statutes work in tandem with the CPFTA to regulate contracts in general. The SOGA is useful for consumers as it provides that goods sold must adhere to a reasonable quality and that they should be free from minor defects. Sections 3(2) and 11 of UCTA prohibit sellers from disclaiming responsibility by excluding liability or limiting their liability through contractual terms unless the term is deemed reasonable.

## II. Consumer Protection (Fair Trading) Act

4 The CPFTA, also known as the “lemon law”, protects consumers in two ways: first, against unfair practice by sellers; and second, by affording consumers extra rights in instances of ‘defective’ goods.

### A. *Claims against unfair practices*

5 A consumer may take legal action against vendors or suppliers for:

- (a) unfair practices,<sup>6</sup> defined broadly as representations that are false,<sup>7</sup> mislead or deceive a customer;<sup>8</sup> or
- (b) taking advantage of a consumer in an unreasonable manner.<sup>9</sup>

6 Claims, however, have to be made within two years of discovering the unfair practice.<sup>10</sup> One example of an unfair practice claim under the CPFTA involved 48 persons who signed up for an options trading course and were dissatisfied with the quality of the course, which did not match the representations made by the instructor of the course.<sup>11</sup> The court granted all 48 of them compensatory damages of \$885 each, and the instructor was also found liable of unfairly selling overpriced software to his students.

### B. *Claims against defective products*

7 In addition, when a product is “defective” in that it does not conform to what is to be reasonably expected,<sup>12</sup> the consumer can require the seller to repair or replace the goods at the seller’s expense within a reasonable time and if it is not of significant inconvenience to the seller.<sup>13</sup> This applies unless it is impossible to repair or replace the product.<sup>14</sup> Alternatively, the CPFTA also provides for the consumer right to ask for a price reduction or a refund,<sup>15</sup> if the consumer so wishes. However, it is possible that the buyer and seller will not agree on whether a product is “defective”.

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<sup>6</sup> CPFTA, *supra* n 3, at s 6.

<sup>7</sup> *Id.*, at s 4(b).

<sup>8</sup> *Id.*, at s 4(a).

<sup>9</sup> *Id.*, at s 4(c).

<sup>10</sup> *Id.*, at s 12.

<sup>11</sup> *Freely Pte Ltd v Ong Kaili* [2010] SGHC 60.

<sup>12</sup> CPFTA, *supra* n 3, at s 12B(1)(b).

<sup>13</sup> *Id.*, at s 12C(1).

<sup>14</sup> *Id.*, at s 12C(3).

<sup>15</sup> *Id.*, at s 12D(1).

- 8 Although the term ‘defective’ may be contentious, one test that the courts have routinely used is whether the product is fit for its purpose, and whether a reasonable person would consider the product to be of satisfactory quality.<sup>16</sup> Further, in relation to defects that only arise after a period of time, the CPFTA presumes that defects discovered within six months of delivery would be taken to be present at the time of delivery,<sup>17</sup> unless the seller can prove otherwise.<sup>18</sup> This helps the consumer greatly as they do not need to prove that the product’s defect existed at the time of purchase; however, the practical implication is that claims in relation to defects must be raised with the sellers within six months of the purchase date.
- 9 One interesting example of the remedy provided by CPFTA can be seen in the case where a buyer of a second-hand car successfully sued the seller for the defective battery in the car, which broke down two months after the purchase, and recovered the money spent on a new battery.<sup>19</sup> The fact that the court granted the remedy even though the buyer had turned down a warranty, which would cover the battery, by the seller to get a cheaper price illustrates the extensive protection provided by the CPFTA. Another important point is that the CPFTA shifts the burden of proof onto the supplier to show that he has complied with the CPFTA,<sup>20</sup> which makes it easier for the consumer to make out his case.
- 10 Thus, as seen from above, the CPFTA does provides consumers with additional protection. Significantly, a consumer can pursue an action against a seller even if the disputed amount is below \$30,000.<sup>21</sup> One potential avenue is the Small Claims Tribunal, where lawyers are prohibited and consumers represent themselves so as to reduce costs.<sup>22</sup>

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<sup>16</sup> See SOGA, *supra* n 5, at ss 14(2A)–14(2B). See also *Speedo Motoring Pte Ltd v Ong Gek Sing* [2014] 2 SLR 1398 at [41]–[52]: the interpretation of s 14 SOGA; which states that when sellers sell goods in the course of business there is an implied term that goods are of a “satisfactory quality”; was applied to a claim for defective products under the CPFTA in this case.

<sup>17</sup> CPFTA, *supra* n 3, at s 12B(3).

<sup>18</sup> *Id.*, at s 12B(4).

<sup>19</sup> *Speedo Motoring Pte Ltd v Ong Gek Sing* [2014] 2 SLR 1398.

<sup>20</sup> CPFTA, *supra* n 3, at s 18A(1).

<sup>21</sup> This is provided that both parties agree to the amount submitted to the Small Claims Tribunal. See CPFTA, *supra* n 3, at s 12F; see also Small Claims Tribunal Act (Cap 308, Rev.Ed. 1998) at s 5(4).

<sup>22</sup> Small Claims Tribunals Act, *supra* n 21, at s 23(1)–(3)

### III. Tort of Negligence

- 11 In cases of defective products, the consumer may sue the manufacturer or distributor of the product directly via the tort of negligence even though there may not be a direct contract between the consumer and manufacturer. The consumer will also be able to sue where there is personal injury suffered. The tort of negligence provides a legal remedy for harm suffered by a person due to the carelessness of another person, provided that certain conditions are met. For example, if you buy a car that malfunctions because of a faulty accelerator pedal, and causes you to suffer an accident, you can potentially sue the car manufacturer in negligence and recover your medical bills.<sup>23</sup> In order to succeed in a negligence claim against a manufacturer, you would need to essentially prove three things: first, that the manufacturer owes you a duty of care; second, that the manufacturer breached that duty of care; and third, that you suffered harm as a result. Put simply, a duty of care is a legal responsibility placed by the law on a person to take care when harm is foreseeable if they do not do so.
- 12 In the infamous Slim 10 saga involving the celebrity Andrea De Cruz,<sup>24</sup> Ms De Cruz successfully claimed damages for her liver failure, including \$150,000 for her pain suffered as a result of consuming Slim 10 pills. She had suffered severe liver damage and sued the manufacturer, the wholesaler, and the distributor of the pill for negligence. Even though the manufacturer could not be located, the Court of Appeal found the wholesale distributor liable because it breached its duty of care owed to the victim as it did not take reasonable steps to ascertain the safety of the pills despite advertising them as “100% natural” and “safe for consumption”.<sup>25</sup>

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<sup>23</sup> See Bill Vlasic, “Toyota Agrees to Settle Lawsuit Tied to Accelerations”, *The New York Times* (26 Dec 2012) < <https://www.nytimes.com/2012/12/27/business/toyota-settles-lawsuit-over-accelerator-recalls-impact.html> > (accessed 7 October 2019).

<sup>24</sup> See Chua Alvin, “Slim 10 Saga”, National Library Board, Singapore Infopedia. <[http://eresources.nlb.gov.sg/infopedia/articles/SIP\\_1815\\_2011-06-30.html](http://eresources.nlb.gov.sg/infopedia/articles/SIP_1815_2011-06-30.html)> (accessed 18 September 2019).

<sup>25</sup> *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR(R) 543, at [43]–[54].

#### **IV. Conclusion**

- 13 Both the CPFTA and the tort of negligence are possible options for a consumer who is embroiled in a dispute concerning product defects. Ultimately, while the consumer is indeed well-protected by various laws, the appropriate legal recourse would depend on factors such as the kind of product defect you are facing, the type as well as quantum of loss suffered. Lastly, seeking legal advice is always prudent, even though legal representation may not be needed to file a claim.

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