


D.I.P.T. Limited and Others v Sanglier Limited v Apollo Chemicals Limited [2023] EWHC 426 (TCC) – In the middle of the supply chain

18 September 2023  Emma Marshall

Introduction

Browne Jacobson represented Sanglier Limited (**Sanglier**) in two separate claims which were jointly tried by the Technology and Construction Court in a 16-day trial in the autumn of 2022 before HHJ Pelling KC.

Sanglier, a manufacturer and filler of sprayable adhesives based in the East Midlands, found itself in the unenviable position of being in the middle of a supply chain dispute, following the widespread delamination of joinery adhesive which was principally used to adhere high pressure laminates to MDF for the production of furniture, shop fit-outs, exhibition stands and the like.

Background

In 2012, D.I.P.T. Limited (**DIPT**) approached Sanglier, seeking the supply of a new sprayable adhesive with a high-solids content and strong bonding power. At that time, Sanglier did not formulate its own products so Sanglier approached its supplier, Apollo Chemicals Limited (**Apollo**), who had formulated products for Sanglier in the past. Apollo formulated and manufactured a new liquid adhesive and supplied it to Sanglier, in bulk. Sanglier added a propellant to the adhesive and put it into canisters and aerosols for onward sale.

Sanglier sold the canisterised and aerosolised adhesive in the UK to DIPT and its group companies, branded as “PRO33”. Sanglier also sold the canisterised and aerosolised adhesive in the European market via Zettex Europe B.V., a distributor in the Netherlands (**Zettex**), branded as “X40”.

DIPT sold the PRO33 to end users in the UK. Zettex sold the X40 in Europe, both to its own end user customers and to Sud-metall Beschlage GmbH (**Sud-Metall**), a German company, who further distributed the X40 to end users across Europe.

In early 2014, DIPT began to receive reports of delamination from its customers and decided to withdraw the PRO33 from the market. In around October 2015, Sud-Metall and Zettex began to receive reports of delamination from their customers. Curiously, the complaints of delamination appeared to be focussed on the adhesive supplied in canisters rather than aerosols. Further, while there were widespread complaints of delamination, the percentage of delamination complaints in comparison to the total volume of product sold, was low. There was also very little consistency in terms of the time between application of the product and its delamination. The complaints of delamination could not be attributed to one or more particular batches of supply. All of the parties engaged in testing of the product. However, no clear discernible cause of failure of the product could be identified.

DIPT settled claims brought against it by its customers and sought to recover those sums, along with other losses from Sanglier. Sud-Metall also settled claims brought against it by its customers and issued proceedings against Zettex in the Courts of Rotterdam. In August 2018, Sud-Metall, Zettex and Sanglier agreed a mechanism for the European customer claims to be investigated and settled.

DIPT issued protective proceedings against Sanglier at the end of 2018. Sanglier issued protective proceedings against Apollo in early 2019, to pass on to Apollo any liability it might be found to have to DIPT, along with its losses as a result of the agreement it had reached

with Sud-Metall and Zettex. The two claims were case managed together from an early stage and proceeded to a joint trial in autumn 2022.

DIPT's case

DIPT's case was that the PRO33 sold by Sanglier did not meet the implied terms set out in the Sale of Goods Act 1979, in that the PRO33 was not of satisfactory quality and was not reasonably fit for its intended purpose. DIPT also claimed loss of business, loss of profits and its costs of settling the end user claims.

Sanglier's case

In defence of DIPT's claim, Sanglier put DIPT to proof in respect of the quality and fitness for purpose of the PRO33, including that it was the PRO33 adhesive which was used in each instance of delamination as opposed to a competitor adhesive and that the PRO33 had been applied correctly. Sanglier also argued that the settlements with the end users which DIPT had entered into were unreasonable and denied that any lost business or lost profits were recoverable, for a number of reasons. To the extent that DIPT were able to prove any defect with the product then Sanglier argued that such defect was the fault of Apollo, being the manufacturer of the underlying adhesive.

In pursuance of its claim against Apollo, Sanglier argued that Apollo had breached a number of the terms set out in Apollo's terms and conditions of business, including that the adhesive was not of satisfactory quality nor was it fit for the purpose made known to Apollo by Sanglier, along with Apollo being in breach of its tortious duty of care. In relation to the formulation of the adhesive specifically, Sanglier argued that there was an inherent defect in the formulation of the adhesive and/or that Apollo's formulation varied from batch to batch. Sanglier also claimed against Apollo for the losses it had suffered in settling the European end user claims and to Zettex and Sud-Metall.

In relation to quantum, there was a limitation of liability in Apollo's terms and conditions which limited Apollo's liability to the price paid for the adhesive. Sanglier argued that such a limitation was unfair pursuant to the Unfair Contract Terms Act 1977.

Apollo's case

Apollo adopted Sanglier's position in putting DIPT to proof that it was the PRO33 which had been used and that it had been applied correctly but denied that there was anything wrong with the adhesive which it supplied to Sanglier. Further and to the extent that there was any issue with the product, Apollo argued that this was due to work done by Sanglier, specifically that there was some form of contamination on the interior surface of the canisters used by Sanglier. Apollo stood by the limitation of liability in its terms and conditions and denied that it had any liability to Sanglier.

The Trial

Factual witnesses

The Court heard evidence from 23 factual witnesses. Three of Sanglier's witnesses did not speak English and so interpreters were used, with two of the non-English speaking witnesses giving evidence remotely from Austria and one German witness attending in person. Another of Sanglier's witnesses gave video evidence from Portugal.

We were assisted by our Pangea Net partner firms, BRANDI Rechtsanwälte Partnerschaft mbB in Germany and KWR Karasek Wietrzyk Rechtsanwälte GmbH in Austria.

Expert witnesses

The parties were each given permission to rely on experts in the fields of (1) materials/engineering, (2) materials failure and (2) organic chemistry.

DIPT

DIPT did not rely on the evidence of an expert in materials/engineering or in organic chemistry.

DIPT's materials failure expert concluded that the delamination was not due to workmanship defects, that Sanglier's canisterisation of the adhesive was not the cause of failure and that the cause of failure of the product was due to a defect with the formulation of the adhesive.

Sanglier

Sanglier did not rely on the evidence of an expert in materials/engineering.

Sanglier instructed one expert with dual expertise in the fields of materials failure and organic chemistry. He concluded that misapplication of the product by the end users contributed to the delaminations but the primary cause of failure was the incorrect formulation of the underlying adhesive.

Apollo

Apollo's materials/engineering expert concluded that, if the canister manufacturing process had been working correctly, then this should have been sufficient to remove any contamination on the interior surface of the canisters.

Apollo's materials failure expert concluded that the PRO33 had been misapplied by the end users.

Apollo's organic chemistry expert concluded that contamination on the interior surface of the canisters used by Sanglier caused the adhesive to destabilise, which ultimately led to delamination.

Outcome

As a result of a number of comments made by HHJ Pelling KC throughout the trial, Sanglier settled its claim against Apollo following the conclusion of the trial but prior to Judgment being handed down, making a small contribution towards Apollo's costs. It therefore was not necessary for the Judge to decide upon the cause of delamination of the adhesive or the enforceability of Apollo's terms and conditions.

Judgment in DIPT's claim against Sanglier was handed down in early 2023, with DIPT being successful in its claim.

Supply chain disputes

Browne Jacobson was instructed by Sanglier in 2016 and represented the company throughout the dispute and the court proceedings, which spanned some six years. During that time, Sanglier continued to trade with both DIPT and Apollo.

This multi-party case involved a substantial number of witnesses and experts, complex technical evidence, non-English speaking witnesses and required the assistance of co-counsel in Germany and Austria. The case was document-intensive and justified the use of an electronic document management system at trial, which proved to be invaluable.

In August 2023, the business and assets of Sanglier were acquired by H.B. Fuller, a US-based leading global adhesive provider supplying industrial adhesives worldwide.

Browne Jacobson has supported Sanglier throughout the acquisition and remains instructed in relation to an ongoing and linked dispute against Sanglier's former product liability insurer and insurance broker.

Should you find yourself involved in a supply chain dispute, in any sector, please do not hesitate to contact Emma Marshall.

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Related expertise

Commercial

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