

Neutral Citation Number: Double-click to add NC number

Case no: J01LS125

IN THE COUNTY COURT SITTING AT LEEDS

Date: 16 January 2024

Before:

HHJ MALEK

Between:

INJURY LAW CHAMBERS LTD

Claimant

- and -

ADELCO SCREEN PROCESS LTD

Defendant

Mr. Wilson Horne for the Claimant
Mr. Stephen Doherty for the Defendant

Hearing dates: 8-10 November 2023

APPROVED JUDGMENT

<p>I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.</p>

HHJ Malek:

Introduction

1. This claim arises out of the sale of goods (namely a Kornit compact 921 Breeze printer (the “**Printer**”) and an ET75G-3 Ecotex Plus Gas Fired Conveyor dryer (the “**Dryer**”) (together the “**Machines**”) by the Defendant, in the course of its business.

Findings of fact

2. Whilst a great deal of time was given over, during the hearing, to a range of factual matters; I have, in the interest of both brevity and clarity, confined myself to making only those findings of fact which are truly necessary. The findings of fact that follow are made on the balance of probabilities.
3. The Claimant is a law firm, but was engaged in a side business through its firm manager, Mr. Naresh Kumarverma, producing printed T shirts. Kornit Digital Europe GmbH (“**Kornit**”) is the manufacturer of the Printer. The Defendant is a manufacturer and seller of print machinery.
4. In around 2015 Mr. Luke Smith, the Defendant’s sales director, met Mr. Kumarverma for the first time. This was most likely at the NEC trade fair in Birmingham. Mr. Kumarverma expressed an interest in purchasing a printer and dryer for the Claimant’s business and, no doubt, Mr. Smith was keen to show and sell the Defendant’s products to him. There then followed discussion and negotiation between the two to include a number of visits to each other’s place of business. This was, firstly, so that Mr. Smith could demonstrate the Printer and/or a dryer to Mr. Kumarverma and, secondly, so that the latter could

show the former the Claimant's business set up. There is no doubt in my mind that during these discussions Mr. Kumarverma explained his needs to Mr. Smith and purpose to which the Claimant would put the Machines. This was, essentially, that a printer suitable for small to mid-sized print production was required.

5. On 15 June 2015 Mr. Smith prepared a quote for the Defendant for a Kornit Storm printer. This was the first quote and for a more expensive printer. This quote was no doubt rejected because on 13 July 2016, the Defendant prepared an order confirmation addressed to Claimant (the "**Order Confirmation**") in respect of the sale of the:

- i) the Printer for USD \$69,000.00 (GBP £59,370) which included *"Installation and Customer training (3 days on site 24 hours). Kornit Application Training consisting of 3 days on-site by Kornit Application Specialist"*. The Printer had a delivery time of 4-6 weeks and was sold with a full 12-months parts and labour warranty with the manufacturer.
- ii) The Dryer for £8,550, inclusive of delivery and installation. The Dryer was a used model, was said to be immediately available, and *"sold as seen"*.

6. The Order Confirmation also provided under "*Finance Options*":

"Option 1) 60 months (3+57 profile) @ £1,364 + VAT

Option 2) Deposit £6,792 + VAT followed by 60 months @ £1,364 + VAT".

7. And included the following “*Notes on expenditure*”:

“Prices are a one off special offer and subject to a signed order confirmation, proof of underwriting, confirmed installation date and deposit received before close of business 29th July 2016. (Our standard payment terms are normally 30% Deposit, 60% on Shipping, balance on delivery.)

... Terms of Payment: Underwritten through a finance company.

Kornit Application Training: Price excludes flights and accommodation”

8. It is only after the receipt of a deposit following the Order Confirmation did the Defendant place an order for the Printer with Kornit.
9. By around 30 August 2016 it was clear to both the Claimant and the Defendant that the Claimant would use third party finance provided by Amicus Asset Finance Group Limited formerly known as Norton Folgate Capital Group Ltd (“**Amicus**”) to acquire the Machines. It was further evident to both the parties that the nature of the finance meant that the sale of the Machines must be from the Defendant to Amicus, as evidenced by the invoice dated 30 August 2016.
10. By around 7 November 2017:
- i) the Claimant had paid the balance of any deposit and entered into a fixed Term Lease Agreement (the “Lease”) with Amicus in respect of the Machines, and

- ii) Amicus paid the Defendant the balance of the purchase price for the Machines.
11. The Printer and Dryer were delivered to the Claimant on 12 October 2016 and on 7 November 2016 the Defendant made arrangements for the installation of the Printer and the Dryer.
 12. The Defendant's engineers, and in particular Mr. Rob Gray, attended the Claimant's premises for three days between 14 and 16 November 2016 for the purpose of installing and setting up the Machines and providing training on their operation.
 13. On 15 November 2016 the Defendant prepared a Completion of Installation Form ("**COI form**") which confirmed that:
 - (1) Training sessions had been provided to the Claimant;
 - (2) The Printer had "*been successfully installed and [was] working properly*".
 14. Mr Gray gave evidence to the effect that during the course of these three days, the Printer and Dryer were set up, installed and tested. He also said that he provided the Claimant's staff with training in the operation of the Machines.
 15. The COI form is signed by Mr. Kumarverma, on behalf of Claimant; yet he gave evidence to the effect that the Printer had not been properly installed, was not working properly and that no proper training had been provided by Mr. Gray. When, during cross-examination, he was asked the obvious question about why he had signed to say something was true when it clearly was not he said "*I am human. I must have misread the dates*". When pressed on the point (namely that

something not true on day one remained untrue on day two) he offered a further explanation. He said that he had noted on the COI form that “*I’ll speak to Luke about this*” and “*signed binding in the honour only*”. This, according to Mr. Kumarverma, meant that he was saying that he did not accept that the installation had been properly completed, the Printer was not working properly, and proper training had not been provided. This, in my judgment, is a clear attempt by Mr. Kumarverma, with the benefit of hindsight, to reinterpret history. Firstly, it is not at all clear to me what is meant by “*signed binding in the honour only*” and I was no more the wiser after Mr. Kumarverma had finished giving his evidence. Secondly, even if one gives what Mr. Kumarverma had written on the COI form the most generous interpretation urged by Mr. Horne in light of the fact that English is not this witness’s first language, the best that can be said is that Mr. Kumarverma is saying on the COI form that he will speak to Luke regarding “this” and that whilst he will sign the document he is, somehow, not going to be bound by it. It is, of course, not at all clear what “this” is and it seems to me to be far-fetched to seek to stretch it over training, installation and the proper function of the machine. Likewise, I cannot see how one can have a position where something (i.e. installation or proper function of the Printer) is accepted, but is at the same time not accepted. If it was not accepted then the obvious thing for Mr. Kumarverma to do was not to sign the COI form at all.

16. The most credible explanation for what was written by Mr. Kumarverma on the COI form was actually offered by Mr. Gray. He said that Mr. Kumarverma was not happy about the extra charge for consumables that had been used in the installation and testing phase and had told him that he (Mr. Kumarverma) would speak to Mr. Smith about this. Not only is it inherently more likely that any

amendment note (where the COI form is to otherwise be signed in acceptance) would be about minor matters (such as a charge for consumables), but also Mr. Kumar's transcript appears just below the note of additional consumable charges.

17. I also prefer Mr. Gray's evidence when it comes to the training provided. This is not only because Mr. Gray's witness evidence is supported by the COI form but also because I found Mr. Kumarverma's evidence to be, in part, unreliable. It may well have been the case that further training was required because, for example, not everyone who needed to be trained was available or had fully grasped what was being demonstrated, but that is a different matter.

18. On 21 November 2016, Barath Mallusamy, the Claimant's employee, sent an email to the Defendant's service department saying, inter alia:

"We had the kornit breeze dtg printer installed last week. It was working fine all these days, however today it is printing it with different alignment and also there are multiple lines on top of the design"

19. During the course of some extraordinary oral evidence Mr. Kumarverma sought to suggest that this email did not actually mean that the printer had been "working fine" during the period following installation and 21 November 2016, but that it meant that the machine "*was working, but it was not printing*". That is to say that it was not working properly. This is clearly at odds with the plain meaning of the words used in the email and Mr. Kumarverma's approach to it spoke volumes. On this point he appeared to advocate rather than give evidence and such advocacy was, ultimately, unconvincing. Firstly, as I have said, the meaning of the email is plain and clear for everyone to see. Secondly, if the

email in question had a different meaning then it was incumbent upon the Claimant to call Mr. Mallusamy to explain what he meant and what, exactly, the position with the Printer had been at the relevant time. It cannot be for Mr Kumarverma to say what Mr. Mallusamy must have meant by the email.

20. On the same date (i.e. Monday), Mr. Gray sent a troubleshooting email to the Claimant which did not resolve the issue.
21. On 22 November 2016 (i.e. Tuesday), the Claimant opened logs regarding the problem on its systems which show that Defendant contacted the manufacturer directly on the same date, who suggested further tests.
22. On 23 November 2016 (i.e. Wednesday), the Defendant requested a number of replacement parts to be shipped directly to the Claimant, and also spoke to the Claimant concerning the troubleshooting measures suggested by the manufacturer. The Defendant also requested that the manufacturer arrange for its engineers to visit the Claimant *“as the printer is still in warranty”*.
23. The replacement parts were delivered to the Claimant on 25 November 2016 (i.e. Friday). On the same day, Kornit’s engineer, Mr. Darren Ratcliffe, attended the Claimant’s premises and appeared to have fixed the issue, noting that the *“issue disappeared. they printed various designs over a 1-hour period and everything appeared to be ok”*.
24. The following business day on 28 November 2016 (i.e. Monday), the Claimant informed Defendant that the issue had recurred. The Defendant followed up on the same day with the manufacturer to get one of their engineers to investigate the issue.

25. On 29 November 2016 (i.e. Tuesday), the Defendant followed up the Claimant's concerns with the manufacturer, when no response was received. The manufacturer then responded on the same date, confirming that parts would be immediately shipped to the Claimant in order to repair the Printer.
26. On 30 November 2016 (i.e. Wednesday), the Defendant informed the Claimant that Kornit's engineer would be delayed, and was scheduled to visit on 1 December 2016 (i.e. the following day, Thursday).
27. The Defendant then became aware, from the Claimant, that the issue was not resolved after that visit. On 6 December 2016 (i.e. Tuesday) the Defendant forwarded an image provided by the Claimant, on the same date, to the manufacturer, seeking a call to discuss next steps.
28. On 7 December 2016, Mr Kumarverma called Mr. Smith and said that he was a solicitor, and wanted "*compensation on his lost time/inks and consumables*" or he would bring a claim against the Defendant. On the same day, the Defendant wrote to the manufacturer asking for an urgent solution to the issue.
29. The following day, on 8 December 2016, Kornit attempted to contact Mr. Kumarverma directly but Mr. Kumarverma did not answer. A number of further attempts were made (by both the Defendant and Kornit) to contact the Claimant between 8 and 10 December.
30. On 10 December 2016, Kornit wrote to the Defendant stating that it was working out whether its diagnostics on the Printer meant that it would be fixed with parts or was a "*SW fix*".

31. On 12 December 2016, the Defendant provided Kornit with further images of the misprints reported by the Claimant. The Defendant was informed, by Kornit, that its engineers would attend the Claimant on 13 December 2016, to install further parts.
32. Kornit's engineers planned a follow up visit to Claimant's site on 14 December 2016, but this was rearranged to the following day because the parts could not be shipped "*for the next day*".
33. Mr. Kumarverma emailed Mr. Smith, of the Defendant, on 14 December 2016 saying, inter alia:

"Since the installation the Kornit machine did not work [ed-sic] properly...

In the circumstances I am considering to part with the machine which is clearly not fit for purpose....

....I am currently considering return of the machine and a full refund".
34. Following the 15 December 2016 visit, Kornit advised the Defendant that it was ordering a main board and headboard from the manufacturer's headquarters.
35. On 21 December 2016 further parts were shipped to the Claimant and the Defendant's engineer fitted those parts on the same date. Whilst that solved some issues, one of the replacement parts was defective and a further visit was arranged for after the Christmas period (i.e. the week of 4 January 2017). Kornit informed the Defendant of the above on 30 December 2016;

36. On 30 December 2016 Mr. Kumar Verma emailed Mr. Smith purportedly rejecting the Machines saying “*please reject my order under the consumer rights act 2015 and refund my full money to mitigate my future losses*”.
37. On 4 January 2017, Kornit offered Claimant a replacement Printer and a number of other extras in order to make up for the delay, with the offer being repeated formally by both Kornit and Defendant on 9 January 2017. Following that offer the Claimant directly contacted Kornit who shipped further parts which were installed by its engineer on 24 January 2017.
38. By virtue of a deed of settlement made on 28 April 2017 (the “**Settlement Deed**”) the Claimant settled any claims that it had against Amicus in return for Amicus exercising its right to reject the Machines and the assignment of any claim for breach of warranty and resultant claim for damages. The Claimant, further, expressly agreed to continue to perform its obligations, including making payments, under the terms of the Lease.
39. On 15 May 2017 Amicus, in its capacity as the legal owner of the Machines, wrote to the Defendant rejecting the Machines.
40. On or around 29 June 2017 the Claimant sent to the Defendant its pre-action protocol letter intimating these proceedings,
41. By virtue of deed of assignment executed in December 2017 (the “**Deed of Assignment**”) Amicus assigned to the Claimant its rights to reject the Machines and claim for damages for breach of a warranty.
42. On 13 October 2021 the Claimant issued these proceedings.

43. It is common ground that the Claimant is not, and has not acted, in breach of the Lease, has continued to perform all its obligations under the Lease and has made and continues to make all payments due.

Discussion

44. The Claimant's pleaded case, as best as can be made out, can be summarised as follows:

- i) The Defendant is in breach of the implied terms under section 14 (2) and (3) of the Sale of Goods Act 1979 (the "SGA") (namely that the goods are of satisfactory quality and / or reasonably fit of the purpose made known by the Claimant to Defendant prior to contracting) and,
- ii) breach of the express warranty within the order confirmation form in relation to the Printer: full 12 months parts and labour through Kornit, and
- iii) it asserts this claim by reason of the Deed of Assignment which also assigns the right of rejection.
- iv) Alternatively, it is alleged that in consideration of the Claimant procuring Amicus to complete the purchase of the Machines, the Defendant warranted to the Claimant by way of a collateral contract, that the Machines are of satisfactory quality and fit for purpose, "*namely [the Claimant's] intended purpose*".

Statutory claim under the SGA

45. It is clear, and it is not claimed otherwise, that the contract for sale in relation to the Machines was between the Defendant and Amicus. There is further no dispute that the SGA applies as between a “buyer” and a “seller” in relation to the contract and that, accordingly, the Claimant does not have a direct statutory cause of action under the SGA against the Defendant.
46. However, it is, of course possible and it is not in contention, that Amicus is entitled to assign any rights of action that it has against the Defendant to the Claimant. It did so by virtue of the Deed of Assignment. Clause 1 of which deed confirms as follows:

“1. Assignment of rights of action

In consideration of the ILCL’s covenants set out below and the payment of £1, Amicus transfers conveys and assigns to ILCL ALL THOSE rights of Amicus in respect of the purchase of the Goods from the Supplier, including but not limited to the right of rejection of the Goods and any claim for damages breach of warranty which, but for this assignment, Amicus would be entitled to.”

47. By virtue of section 14(2) the SGA, the contract of sale between Defendant and Amicus contained an implied term as to satisfactory quality, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances, including the fitness of the goods for the purposes for which they are commonly supplied (s. 14(3)).

48. Under s 11(2) of the SGA where there has been a breach of a relevant condition under s. 14(2), the buyer may elect to waive the condition, or elect to treat the condition as a warranty (s. 11(2) SGA).
49. A buyer also elects to treat a breach of condition as a breach of warranty where they accept the goods (s. 11(4) SGA). Thereafter, the buyer cannot reject the goods or treat the contract as having been repudiated.
50. Section 35 of the SGA provides that:

“(1) The buyer is deemed to have accepted the goods subject to subsection (2) below—

(a) when he intimates to the seller that he has accepted them, or

(b) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller.

(2) Where goods are delivered to the buyer, and he has not previously examined them, he is not deemed to have accepted them under subsection (1) above until he has had a reasonable opportunity of examining them for the purpose

(a) of ascertaining whether they are in conformity with the contract, and

(b) in the case of a contract for sale by sample, of comparing the bulk with the sample.

...

(4) The buyer is also deemed to have accepted the goods when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

(5) The questions that are material in determining for the purposes of subsection (4) above whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods for the purpose mentioned in subsection (2) above.” [emphasis added]

51. Clause 2.1 of the Deed of Settlement contains a term providing that the Lease *“remains in full force and effect”* and that *“ILCL agrees that it will continue to perform all of its obligations under the Lease...and Amicus’s rights under the Lease Agreement shall remain unaffected by the terms of this Deed”*.
52. Recital C of the Deed of Assignment acknowledges that the Claimant *“has made and continues to make the periodic sums due under the Lease to Amicus”*; and a statement of account dated 9 January 2020 shows that Amicus has continued to take monthly payments from Claimant, in respect of the Machines, after their letter of rejection dated 15 May 2017.
53. Therefore, it is argued by the Defendant, Amicus has continued to act as the owner of the Machines and that enforcing the terms of the lease over the goods was an act which was *“inconsistent with the ownership of the seller”*. The Defendant relied upon the decision in *Filobake Limited v Rondo Limited & Or [2004] EWHC 695 (TCC)* at [130] (*“Filobake”*). The Claimant urges caution against any extrapolation from the facts of *Filobake*.

54. For my part, I do not think I need to take up too much time in considering *Filobake*. The case offers no assistance on any point of principle or guidance on how the clear wording of the s.35 of the SGA ought to be interpreted. It seems to me that whether the buyer has done “*any act in relation to them which is inconsistent with the ownership of the seller*” is a straightforward jury question. In this case Amicus has clearly continued to act as if it was the owner of the Machines after it had purportedly rejected them. It did not, for example, terminate the lease with the Claimant on the basis that it, for example, no longer owned the Machines because it had rejected them. On the contrary, Amicus continued to assert that the Lease remained in full force and effect, and it continued to take payments from the Claimant in respect of the Lease. It is, in my judgment, difficult to imagine a more clear-cut situation of a buyer acting in a way that is inconsistent with the ownership of the seller.
55. It follows then that Amicus has lost its right to reject the Machines, as has the Claimant given the contingent nature of the latter’s claim.
56. In the event that Amicus cannot reject the Machines its cause of action is limited to a claim for damages for breach of a warranty. The difficulty with a claim for damages is that (i) by email dated 17 October 2017 Mr. Jeremy Guildford has confirmed on behalf of Amicus that “*Amicus has no current loss*”, (ii) Amicus has not terminated the lease and continues to receive monthly payments in respect of it, and (iii) the Claimant has settled its claim against Amicus in full and, therefore, there is no prospect of any future loss for Amicus arising in connection with the Lease. I would, therefore, agree with the Defendant that

Amicus cannot show a loss arising out of any statutory claims under the SGA against the Defendant and, therefore, neither can the Claimant.

Breach of express warranty for 12 months in respect parts and labour

57. This part of the Claimant’s case appeared, rightly in my view, not to be pursued with much vigour in closing. The allegation here, I think, is that the Defendant has failed to provide or procure Kornit to provide parts and labour in relation to the Printer in order to affect a repair of the Printer when the Printer broke down within 12 months of purchase. The evidence clearly shows that the Defendant and/or Kornit ordered replacement parts and sent service engineers to the Claimant’s premises in order to attempt to repair the Printer. In fact, in the end, the Defendant even offered to provide the Claimant with a replacement printer. The Defendant cannot be said, therefore, to have acted in breach of the express warranty that it provided to the Claimant.

Collateral warranty or contract

58. The relevant legal principles are not controversial and can be summarised as follows:
- i) Collateral contracts are, by their very nature rare, viewed with suspicion by the law and must be strictly proved [*Heilbut, Symons & Co v Buckleton* [1913] AC 30 stated at 47.]
 - ii) The burden is on the Claimant to establish the existence of a collateral warranty – [*New York Laser Clinic Limited v Naturastudios Limited* [2019] EWHC 2892 (QB) at [87] (“NYLC”)].

- iii) *“A collateral warranty is a promise or assertion, with contractual force, which leads to a contract being entered into. If the warranty that is relied upon turns out to be false, the person to whom it is made may have a cause of action against the promisor for breach of contract. It is not necessary that the warranty was made fraudulently, or even negligently.” [34] of NYLC*
- iv) The requirements for a claim for breach of a collateral warranty, in tripartite cases, are as follows:
- (1) A warranty (i.e. a statement) was given to a third party by one of the parties to the main contract, in advance of the main contract being entered into;
 - (2) The warranty was not a mere representation but was intended to have contractual force;
 - (3) The third party provided consideration to the party which gave the warranty;
 - (4) In reliance upon the warranty, the third party caused another party to enter into the main contract with the party who gave the warranty;
 - (5) The warranty was inaccurate;
 - (6) The third party suffered financial loss as a result; and
 - (7) There are no relevant exclusion clauses.” [par 48 NYLC].

59. In applying these legal principles I agree that in order to establish and rely upon a collateral contract the Claimant must show that:
- i) The Defendant made particular statements to the Claimant concerning the Printer before the contract was entered into;
 - ii) Intending those statements to be more than mere representations, and to have contractual force;
 - iii) That it relied upon those statements in paying a deposit and entering into a hire purchase arrangement with Amicus;
 - iv) The representations made by Defendant were inaccurate; and
 - v) That it suffered loss because Claimant 's statements relied upon turned out to be false.

The Printer

60. The relevant parts of the particulars of claim provide:
- i) *“Prior to the purchase of the machines, [the Claimant] had previously enquired about the purchase of the machines to ascertain that they were fit for [the Claimant 's] purpose, namely [the -sic] producing T-shirts and sweatshirts for the expansion of pre-existing markets notably through established eBay and Amazon accounts...Prior to the sale and purchase of the machines , the Defendant was aware of [the Claimant 's] aforesaid intended purpose for the machine (“[the Claimant 's] intended purpose”)",*

- ii) *“In reliance upon promises [made – sic] by the Defendant’s employees to [the Claimant] to the effect that the machines would fulfil [the Claimant’s] intended purpose, [the Claimant] entered into an order confirmation form dated 13 July 2016 with the Defendant in respect of the machines....”,*

- iii) *“In consideration of the promise made on behalf of the Defendant that the machines were fit for [the Claimant’s] intended purpose, [the Claimant] agree[d – sic] to purchase the same by entering into the said order confirmation form and electing that the actual purchase would be completed by a third party finance company, namely [Amicus]. The said promises as to fitness for purpose of [Claimant’s] intended purpose made by the Defendant became the subject of a collateral contract in favour of [the Claimant] at the time it signed the order confirmation”,*

and

- iv) *“In consideration of [the Claimant] procuring [Amicus] to complete the purchase of the machines by entering into the said Fixed Term Lease Finance Agreement with [Amicus], the Defendant warranted to [the Claimant] by way of collateral contract, that [the Claimant] would have the benefit of the said Kornit Printer warranty for a full 12 months parts and labour and that the machines were of satisfactory quality and fit for purpose, namely [the Claimant ’s] intended purpose. Consequently, the Defendant is in repudiatory breach of the said collateral contract”.*

61. The Defendant says that Claimant ’s particulars of claim do not identify a particular statement that it is alleged the Defendant made. I agree. The Claimant

does not specify whether the statement was oral or in writing, and if the former the words used, who said them, to whom, when or where. This is all detail, in my judgment, which the Claimant has failed to even attempt to specify.

62. Putting that aside, for the moment, as a “mere” pleading point; if it is the Claimant’s case that the Defendant, through its servant or agent, said that “*the Defendant will mirror and give to you (the Claimant), in addition to Amicus, the warranties implied by section 14 of the SGA*” then there is clearly no evidence that this statement was made. At its highest, the evidence can only show that the statements made were to the effect that the Kornit 921 Breeze would be a model of printer fit for the Claimant’s intended purpose of use in a t-shirt printing business (the “Representation”). To the extent that it might be alleged that any statement was made about whether the Printer itself (as opposed to this model of printer) was fit for the Claimant’s intended purpose I reject such a contention. The evidence clearly shows that the Defendant made no such representations concerning the Printer specifically, and that the Printer was not ordered until after the Claimant had already paid a deposit. Likewise, the Claimant cannot point to any statement about the quality of the Printer.
63. Even if the Claimant’s case is taken at its highest it remains fatally flawed. This is because the Claimant has failed to show how the Representation were inaccurate. The evidence shows that the Printer was part of a product line that was designed with small to midsize garment production in mind. Nothing that the Defendant said in that context was shown to be incorrect or false. Accordingly, any representation that the Kornit 921 Breeze model printer (of

which the Printer is one) was a suitable product for the purposes of medium-sized garment manufacturers was (and is) entirely correct.

64. The Defendant also raises a number of other arguments as to why no collateral contract can exist. Given what I have already said above, I do not need to deal with these. However, I do note that the Defendant also argues that the Claimant has failed to demonstrate that the Representation was intended to have contractual force. It is common ground that in order to establish a collateral contract any representation must be made with a view to persuading the recipient to enter into the contract. For my part, I am not sure that the fact that s.14 of the SGA implied the Representation into the contract between the Defendant and Amicus means that it adds nothing to any contract between the Claimant and the Defendant. Whilst I accept that the subject matter of the contract is the same the rights and remedies of parties may not be; as is amply demonstrated by this case. Be that as it may; as I have said, I do not need to deal with this further argument and, therefore, leave it here.

The Dryer

65. There is no dispute that the Dryer is defective in anyway. Rather, the Claimant's complaint is that:
- i) *“the machines were to be purchased together...” and the Dryer was “to supplement the use of the said [Printer]” and that if the Printer “was defective or unusable, [the Claimant] would have no use for the said [Dryer]”,*

- ii) *“prior to the sale and purchase of the machines, the Defendant was aware of [the Claimant’s] aforesaid intended purpose for the machines”,*
- iii) *“in reliance upon the promises made by the Defendant’s employees to [the Claimant] [the Claimant] entered into an order confirmation form dated 13 July 2016”, and*
- iv) *“The said promises as to fitness of purpose of [the Claimant ’s] intended purpose made by [the- sic] Defendant became the subject of a collateral contract in favour of [the Claimant]...”.*

66. This position is borne out by the evidence where, for example, Mr. Kumarverma the Claimant ’s office manager, says at paragraph 20 of his witness statement that Luke Smith, the Defendant’s employee and with whom Mr Kumarverma had the most dealings (at least prior to the sale and purchase of the Machines) *“visited premises in Doncaster various times and met me and hence he was well versed with the “intended purpose” of the buyer”*. He goes on to say at paragraph 21 *“I note that the defendant must have been clear in his mind about the [Claimant ’s] intended purpose since the very first Quotation supplied by him to the claimant on 13 June 2015”*. Mr. Kumarverma says no more on this topic.

67. The first point to note is that the allegation made, presumably supported by Mr. Kumarverma’s evidence, is that the Defendant was or must have been aware of the Claimant’s intended purpose for the Dryer. There is, thus, no pleaded allegation, let alone evidence, that any sort of statement was made by Mr. Smith (or anyone else on the Defendant’s behalf) to the effect that *“This dryer is fit for*

your intended purpose as communicated to me". This is clearly fatal to the formation of a collateral contract. However, fraught with even more difficulty is the pleaded case that the communicated purpose (or part of it) was that if the Dryer became defective or unusable then the Claimant would have no use for the Printer. In the context of an actionable collateral warranty, the Defendant would also have had to have, at the very least, made a statement to the Claimant to the effect "*don't worry, if the Printer can't be used or becomes defective you can still use the Dryer*" and for this to have been false. Putting aside anything else, there is not pleaded and nor is there any evidence to the effect that such a statement was ever made.

68. There can, accordingly, have been no actionable collateral warranty provided by the Defendant relating to the Dryer as pleaded by the Claimant.

Conclusion

69. For the reasons given the Claimant's case must fail and is accordingly dismissed.
70. The parties are invited to agree any consequential orders and present a draft to me in advance of this judgment being handed down. In the event that a draft order is agreed the parties and their representatives are excused from any further attendance. Alternatively, if agreement is not possible I shall hear submissions on any consequential orders following the handing down of judgment.