IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 196

Suit 1645/1996, RA 61/1998

Between

NEC Electronics Inc
NEC Semiconductors
Singapore Pte Ltd

… *Plaintiff*

And

Nippon Cargo Airlines Co Ltd
Singapore Airport Terminal
Services (Pte) Ltd
U-Freight Singapore Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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NEC Electronics Inc and Another v Nippon Cargo Airlines Co Ltd and Others

[1998] SGHC 196

Suit 1645/1996, RA 61/1998
Choo Han Teck JC
04 June 1998

Judgment:

GROUNDS OF DECISION

1. This was an appeal by the 1st defendants against the assessment of damages by the learned assistant registrar who ordered damages against them in the sum of US$461,147.46 with interest at 6% per annum from the date of the writ to judgment.

2. The plaintiffs sued the defendants for loss or non-delivery of 21 cartons of disk drives. The cargo was part of 49 cartons packed into three skids and handed over to the 3rd defendants who were freight forwarders. The 1st defendants handed the skids over to the 2nd defendants who were the ground handlers. The 1st defendants were the carriers.

3. The action against the 2nd and 3rd defendants were discontinued, but judgment in default of appearance was entered against the 1st defendants. The

1st defendants' application to set aside the judgment was dismissed. Parties then proceeded to assessment of damages before the learned assistant registrar.

4. The plaintiffs claimed that the loss of the 21 cartons of disk drives included profit and incidental expenses such as freight charges. The total loss was US$461,157.46. Evidence of loss was adduced by the plaintiffs' witness Cliff Chng whose evidence was virtually unchallenged at the hearing before the learned assistant registrar.

5. One of the grounds of appeal raised the question as to whether the 1st defendants were entitled to the limited liability provision under Article 22(2)(a) of the amended Warsaw Convention. Article 25, which the plaintiffs' counsel relied upon, provided, however, that Article 22 shall not apply "if it is proved that the damages resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment".

6. Mr Aziz for the 1st defendants submitted that the plaintiffs cannot rely on Article 25. It was not disputed that the loss of the cargo was due to theft by a gang of four who included an employee of the 2nd defendants who, the defendant's counsel conceded to be an agent of the 1st defendants. The breach by a servant or employee of an agent will naturally bind that agent.

7. However, the thrust of Mr Aziz's argument was that the employee in question was not acting within the scope of his employment. He submitted that that employee was only a guard at the cargo complex and was not entrusted with the

cargo. The facts show that he not only acted as an informant to alert his accomplices when the valuable cargo came in, but also participated as a lookout during the theft. For his role he was duly convicted in the criminal courts and sentenced accordingly.

8. Mr Aziz endeavoured to persuade me to draw a distinction between entrustment and opportunity. He argued that the employee in question merely had the opportunity to know where the cargo was. In my humble view, once a person was employed to look after the premises of a place, he was also charged with looking after the safety of the goods lawfully in that place. If he rendered assistance in the theft or the causing of damage to those goods he would have done so within the scope of his employment, that is to say, that his wilful act was done whilst he was supposed to be performing his duties in the course of his employment.

9. I am, therefore, of the view that there was no merit in this argument. Mr Aziz, finally, submitted that the learned Assistant Registrar was wrong in the quantum awarded because the value of the goods was disputed. However, the 1st defendants called no evidence nor did they challenge the proof of the value during the assessment. Counsel submitted that only invoices were produced by the plaintiffs and that does not indicate the measure of loss because there was no proof of payment. In the absence of greater enquiry of the witnesses at the assessment, I would hesitate to upset the findings of the learned assistant registrar.

10. In the circumstances, the appeal was dismissed and costs of $2,000 awarded to the plaintiffs.

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Choo Han Teck

Judicial Commissioner

Choo Han Teck JC

Hussainar Aziz [Colin Ng & Partners] for the 1st defendants/appellant
R Govintharasah [Gurbani & Co] for the plaintiffs/respondent

Version No 1: 20 Nov 2026 (00:35 hrs)