Sim Chiang Lee & Another v Lee Hock Chuan & Others
[2000] SGHC 265

Case Number : Suit 1777/1999

Decision Date : 05 December 2000

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Gn Chiang Soon (Gn & Company) for the first and second plaintiffs; Cheong Yuen Hee and Alyssa Lee (Lim & Gopalan) for the first defendants; Anparasan s/o Kamachi (William Chai & Rama) for the second defendants; Teo Weng Kie and Kanita Mahendran (Khattar Wong & Partners) for the third defendants

Parties : —

Tort – Negligence – Duty of care – Duty of care as owner and duty of care as main tenant of premises

Tort – Negligence – Res ipsa loquitur – Only an evidentiary doctrine – Where plaintiff asserts negligence, burden still on plaintiff to prove negligence

Tort – Rule in Rylands v Fletcher – Whether rule applicable to facts – Whether rule should be extended to make non-occupiers liable

Judgment

GROUNDS OF DECISION

(IN RESPECT OF THE FIRST AND SECOND DEFENDANTS)

The Action

1. On 20 February 1999 a fire razed two shophouses known as 23 and 25 Senang Crescent ("No. 23" and "No. 25" respectively). The first plaintiffs are the owners of No. 23 and the second plaintiff was the tenant of the second storey of that shophouse. The first defendants are the owners of No. 25. The second defendants were the tenants of the second storey of No. 25, and the third defendants were the tenants of the first storey of No. 25. The plaintiffs sued all three defendants for damage arising from the fire on the ground that the fire started at No. 25 and was the result of the negligence of the defendants. They also sued alternatively under the rule in *Rylands v Fletcher*, and recited *res ipsa loquitur* for good measure. No claim, however, was made in the tort of nuisance. The first and second defendants filed a counter-claim on the ground that the fire started at No. 23. At trial Mr. Cheong and Mr. Anparasan for the first and second defendants respectively were granted leave to discontinue the counter-claims. At the close of the plaintiffs' case, counsel for the first and second defendants submitted that there was no case for their clients to meet.

2. The main issue of fact concerned the origin and cause of the fire although, of course, where the cause of action founded on negligence is concerned, the origin of fire need not necessarily be at the defendants' premises. However, in this case the plaintiffs' allegations were that the point of origin and the negligent act (cause of the fire) occurred at the premises occupied by the third defendants, namely the first storey of No. 25. The plaintiffs' case was that the fire originated beneath a woodpile in the front yard of No. 25. They alleged that the fire ignited from a fuse box which had been negligently tampered with when the normal fuses were replaced with three copper wires. Consequently, the fuses failed to blow when a short-circuit occurred. An electrical arcing (electrical sparks) occurred and ignited the fire which subsequently spread to the plaintiffs' premises next door.

3. Counsel for the first and second defendants submitted that the action against them ought to be dismissed. Their submissions were straightforward. Counsel argued that there is no legal liability in law against persons who were not in occupation or control of premises in which a fire had started and spread to surrounding premises. Secondly, they argued, that there was no allegation or evidence of any negligence on their clients' part in causing the fire. The evidence was manifestly clear that neither of these defendants were occupiers or tenants of the

lower premises at No. 25.

Strict Liability Of Owners

4. Mr. Gn, counsel for the plaintiffs, submitted that the first defendants, as owners, are liable to the plaintiffs on "an ancient common law" that owners are strictly liable for fires that start or spread from their premises. He argued that s 63 of the Insurance Act, Cap 142, offers the only possible relief to an owner, but that provision does not avail the first defendants because the fire here was not an accidental fire. S 63 is based on s 86 of The Fires Prevention (Metropolis) Act 1774. S 63 reads as follows:

> "No action shall lie against a person in whose house or premises or on whose estate any fire accidentally began except that no contract or agreement made between landlord and tenant shall be hereby defeated or made void".

5. Mr. Gn contended that in this case, if he succeeded in showing that the fire was caused by someone's negligence, and it did not matter whose, then the fire cannot be said to have started accidentally, and the first defendants as owners must therefore be liable. An important point must first be made about s 63. It is a statutory provision which confers immunity from action in circumstances in which fire was started accidentally. It is not a statutory provision creating a cause of action. This statutory provision therefore provides an instance in which an owner would not be liable. It does not interfere with the position of the owner at common law. Historically, the cases that have dealt with the escape of fire concerned owners who were also occupiers, but Mr. Gn wanted a judicial pronouncement that an owner who is not in occupation or control is liable for damage caused by fire spread from his premises unless the fire began accidentally. A passage from Michael Jones's *Textbook On Torts* (7th edition, p367 – p368 8.2.1) provides an illuminating summary of an owner's liability at common law:

> "The early common law remedy for damage caused by fire was a form of trespass on the case for negligently allowing one's fire to escape. The word 'negligently' was not used in its modern sense and there is some doubt as to whether liability was strict or fault-based (cf. *Winfield and Jolowicz, p446* with *Clerk and Lindsell, 25-29* and *Charlesworth and Percy, 12-105* to *12-109*). Many of the judicial comments to the effect that a man must keep his fire 'at his peril' have been made in the context of actions which are analogous to the rule in *Rylands v Fletcher,* although liability for fire predates *Rylands v Fletcher*. Thus, there must be an escape; liability is based on the occupation and control of land and so an occupier is liable for the acts of others who are under his control; and act of a stranger or an unforeseeable Act of God are defences.
>
> The modern tendency, then, has been to assimilate the common law liability for fire with the rule in *Rylands & Fletcher*."

6. A similar commentary is found in *The Law of Torts*, by John Fleming (9th edition, p392) which stated that the common law liability "was fundamentally changed by *Rylands v Fletcher*. Not only was fire itself readily treated as a *Rylands v Fletcher* object, but the ancient rule for the escape of fire, including its statutory modification, was eventually absorbed and qualified by, the principle in *Rylands v Fletcher*". In my view, there is neither authority nor justification in holding an owner who is not in occupation or control of premises which had been tenanted out is nonetheless liable for fire arising and spreading from those premises on account of mere ownership. The plaintiffs' recourse is to sue the actual occupier who may join the owner as a third party if he has an independent claim for an indemnity from the owner.

Ryland v Fletcher

And The First And Second Defendant

7. Mr. Gn conceded that the plaintiffs had no basis in proceeding against the owners here under the rule in *Rylands v Fletcher*, but sought to argue that they did as against the second defendants. However, the plaintiffs did not plead *Rylands v Fletcher* against the second defendants and, having closed their case, it was too late to amend the pleadings. It would have required them to plead the particulars of non-natural user and the subsequent escape, both of which are indispensable elements of the rule. The only particulars in the pleadings refer to an escape of

fire due to what the plaintiffs call "defective wiring". It would not be right to expect the second defendants to amend their defence and get-up their case at this stage to meet the fresh cause. Furthermore, the plaintiffs' evidence have not shown that there was a non-natural user of land, by the second defendants. The ordinary use of electricity is not a non-natural user of land in the *Ryland v Fletcher* sense. No submission was, in any event, made by Mr. Gn in this regard.

Negligence Against First And Second Defendants

8. The third ground which Mr. Gn relied on against the first and second defendants was based on negligence. He argued that these defendants though not occupiers of the lower floor of No. 25, were under a duty of care as owner and main tenant respectively, to inspect the fuse box at regular intervals. On the evidence, the third defendants were in occupation as tenants for at least four years prior to the fire. There was no contractual obligation on the part of the first or second defendants to maintain the fuse box, and even if there were, their duty as owner and main tenant was only to carry out repairs as and when required by the tenant. It would be an unwarranted expansion of that duty to require them to make regular inspection of premises which they had no right of entry during the duration of the tenancy to the third defendants without the latter's consent. Furthermore, the suggestion, postulated by Mr. Gn, that three separate and independent parties (the three defendants) may and ought to share the same duty of inspecting the fuse box is impractical, and unnecessary for imposing legal responsibility. Only one party should hold that responsibility, and that lies with the occupier. If he has a separate contractual arrangement with anyone else then it is for him to bring that person into the action by way of third party proceedings. Mr. Gn relied on *Virco Metal Industrial Pte Ltd v Carltech Trading Industries Pte Ltd & Ors, [2000] 2 SLR 201,* for the authority that the landlord is responsible for checking and installing a safe and proper switch. But that case turned on its own facts. There was no allegation by the plaintiffs or the third defendants in the present case that it was the first or second defendants who replaced the fuses with copper wires. The third defendants' case was that they did not tamper with the fuses but they did not know who did; and they were not prepared to say that it was either the first or second defendants who were responsible for it. In the nine years that the first storey of No. 25 was tenanted out no complaint was received by the first defendant landlords that something about the fuse box was amiss. There was no evidence that anyone had any inclination that the fuses in the fuse box had been replaced by copper wire; but more importantly, there was no evidence that that particular fuse box, in the shophouse that was at least 30 years old, was still in use.

9. Mr. Gn suggested that an expansion of the duty of care requiring the three defendants to make regular inspection merely required them to meet and agree on the appointment of an electrician to make regular inspections of the fuse box, and was, therefore, not an onerous duty. It is not quite so simple. Mr. Gn's idea may be convenient for persons in the plaintiff's position, but an expansion of the duty he proposed involves an unnecessary intrusion into areas of law and practice concerning landlords and tenants. The law imposes sufficient obligations and sanctions on an occupier not to do harm to his neighbour, whether by trespass, negligence, nuisance or under the Rule in *Rylands v Fletcher*. An occupier in the plaintiffs' position seeking comfort against harm or damage that falls outside the above laws protecting him, must cover himself with appropriate insurance.

Res Ipsa Loquitur

10. I need to deal with the plaintiffs' plea of *res ipsa loquitur*. In my judgment, *res ipsa loquitur* is only an evidentiary doctrine and does not apply in this case because the plaintiffs had specifically sought to show that the cause of the fire was an electrical ignition. That being the case, it will not assist them to say that if they fail, the defendants must then explain how the fire occurred. This is not how the doctrine is intended to be used. The burden of proof lies with he who asserts. Where a plaintiff asserts negligence he must prove negligence. If he is unable to assert any cause, then he may, if the circumstances permit, cry *res ipsa loquitur* and shift the burden of proof to the defendant to establish how the facts complained of occurred. The overall burden (the legal burden) of proving the plaintiffs' case remains with the plaintiff. Where, as in this case, the plaintiff makes a specific allegation of negligence he cannot rely on the rule to establish a preliminary case of negligence. He must proceed to prove forthwith that which he has asserted to be the defendant's negligence.

Conclusion

11. For the reasons above I find that the plaintiffs have no cause to pursue against the first and second defendants. Their application to dismiss the plaintiffs' claim was therefore allowed. The trial then continued against the third defendants. In the meantime, however, the plaintiffs have filed an appeal against my decision dismissing their claim against the first and second defendants.

Sgd:

Choo Han Teck
Judicial Commissioner