Hatton National Bank Ltd v Ocean Gourmet Pte Ltd
[2000] SGHC 266

Case Number : Suit 49/ 2000

Decision Date : 06 December 2000

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Lee Wei Yung and K Subramaniam (Khattar Wong & Partners) for the defendants/appellants; Samuel Chacko (Colin Ng & Partners) for the plaintiffs/respondents

Parties : Hatton National Bank Ltd — Ocean Gourmet Pte Ltd

Bills of Exchange and Other Negotiable Instruments – Requirements of form – Bill of exchange payable at a future time – Bill accepted by drawee in exchange for release of title documents to goods – Whether bill of exchange valid – Whether drawee estopped from denying validity of accepted bills of exchange – ss 3 & 11 Bills of Exchange Act (Cap 23)

: The defendants in this action, Ocean Gourmet Pte Ltd (`Ocean Gourmet`) imported quantities of seafood from a company in Sri Lanka called Wisidagama Seafood (Pvt) Ltd (`Wisi`). Payment for the imports were effected by means of bills of exchange drawn on Ocean Gourmet by Wisi, the beneficiary of the bills being Hatton National Bank Ltd (`Hatton Bank`) the plaintiffs in this action. A typical bill of exchange would be in the following format:

	BILL OF EXCHANGE	
		No WS/xxx
For SGD xxx		Colombo xxx (date)
DA		
At 21 days Sight of this FIRST of Exchange		
(the SECOND of the same tenor and date being unpaid)		
Pay to the Order of	Hatton National Bank Ltd, City Office,	
	Colombo 01, Sri Lanka,	
the sum of	Singapore Dollars xxx.	Value received
To:	For:	
Ocean Gourmet Pte Ltd	WISIDAGAMA SEAFOOD (PVT) LTD	
68, Circular Road	Sd: xxx	
Singapore 049422	DIRECTOR	

These bills of exchange were tendered to Ocean Gourmet for acceptance by the Kwangtung Provincial Bank (`Kwangtung Bank`), the collecting agents in Singapore of Hatton Bank. Upon Ocean Gourmet accepting each of the bills of exchange, the Kwangtung Bank would release to Ocean Gourmet the bills of lading and other documents required by Ocean Gourmet to obtain the release of the relevant cargo from the shippers.

According to an affidavit filed on behalf Hatton Bank, it was to reflect this arrangement (under which the shipping documents would be handed to Ocean Gourmet against acceptance of the bill of exchange) that the word `Sight` in `21 days Sight` appearing on the bills of exchange had been deleted and substituted with the word `DA` to signify that payment was to be made 21 days after the bills of lading and other documents had been handed over to Ocean Gourmet upon Ocean Gourmet signing their acceptance of the bill of exchange. The Kwangtung Bank was specifically informed by Hatton Bank that they were to telex Hatton Bank for instructions if Ocean Gourmet refused to accept any of the bills of exchange.

In these proceedings, Hatton Bank claimed against Ocean Gourmet on four bills of exchange that had been accepted by Ocean Gourmet but which, upon maturity, had not been paid for in full by Ocean Gourmet. Details of these bills of exchange were as follows:

DATE OF BILL	DATE OF ACCEPTANCE		AMOUNT
29/01/98	12/2/98	S$	106,000
23/2/98	27/2/98	S$	72,979
16/3/09	27/3/98	S$	53,137
30/3/98	8/4/98	S$	83,755
		S$	315,871

Ocean Gourmet had, however, paid Hatton Bank a sum of $20,000 towards these outstanding bills and Hatton Bank, in this suit, claimed the balance sum of $295,871 from Ocean Gourmet.

Hatton Bank applied, under O 14, for summary judgment. For the purposes of the O 14 application, Hatton Bank exhibited numerous letters to them from Ocean Gourmet. It was clear from these letters that Ocean Gourmet had, prior to the commencement of these proceedings, unreservedly admitted that they owed the amounts claimed. The correspondence showed that Ocean Gourmet had persistently pleaded for additional time to pay but failed to pay whenever additional time was granted. The only reason given by Ocean Gourmet in the correspondence for these defaults was that the economic crisis in the region had badly affected their business.

Despite these full admissions of liability and despite having made part payment in settlement of the outstanding, Ocean Gourmet resisted the O 14 application. In addition, Ocean Gourmet (vide SIC 54/2000) took out an application that Hatton Bank`s claim be struck out on the grounds that it disclosed no reasonable cause of action and that it was frivolous, vexatious and an abuse of process. In support of their position, Ocean Gourmet, in an affidavit filed by their director Ong Chee Cheng, raised the following issues:

(a) Ocean Gourmet did not know the extent to which the bills of exchange were discounted to Hatton Bank by Wisi;

(b) Ocean Gourmet was not privy to how the bills of exchange allegedly drawn by Wisi got into the hands of Hatton Bank;

(c) The bills of exchange were not valid as the bills did not give a fixed or determinable future time within which they would mature; and

(d) As the bills of exchange were not valid, the part payments (which, it was alleged, were made only to forestall legal proceedings) would be payments made under a mistake of fact and/or law and therefore recoverable from Ocean Gourmet.

The assistant registrar dismissed Ocean Gourmet`s application to strike out the statement of claim and granted Hatton Bank`s application for summary judgment. Ocean Gourmet, dissatisfied with both those orders brought this appeal. At the hearing of the appeal, Mr Lee Wei Yung, counsel for Ocean Gourmet, made no submission on issues (a) and (b) raised by Mr Ong in his affidavit but relied on issues (c) and (d).

A bill of exchange is defined in s 3 of the Bills of Exchange Act (Cap 23), as follows:

> *(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer.*
>
> *(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.*

The bills of exchange in this case were bills payable at a future time. The provision in the Bills of Exchange Act relevant to such situations is s 11 which reads:

> *(1) A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable -*
>
> *(a) at a fixed period after date or sight; or*
>
> *(b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.*
>
> *(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.*

Mr Lee submitted that as the instruments in this case were not unconditional orders to pay, as required by s 3(1), but were in nature of an order to pay contingent upon acceptance, the requirements of the Bills of Exchange Act were not fulfilled and the instruments in question were not (by reason of ss 3(2) and 11(2) of the Act) bills of exchange. Mr Lee therefore urged that Hatton Bank`s application for summary judgment be dismissed, and that Ocean Gourmet`s application for the statement of claim to be struck out, be granted.

Mr Lee cited numerous authorities in support of the proposition that the bills of exchange in this case were not valid. The principles of law contained in these authorities were not in dispute and no useful purpose will be served in reciting these authorities.

Mr Samuel Chacko, who appeared for Hatton Bank, submitted that the arrangement under which Wisi exported the goods covered by the bills of exchange to Ocean Gourmet was that upon receipt of the bills of exchange from Wisi, Hatton Bank would pay Wisi the face value less an agreed discount. Thereafter Hatton Bank would present the bills of exchange to Ocean Gourmet for acceptance and payment. Upon Ocean Gourmet`s acceptance of the bills of exchange, Hatton Bank would release the title documents to the relevant goods to Ocean Gourmet on the understanding stated in the bill of exchange that Ocean Gourmet would, within 21 days of acceptance, pay Hatton Bank the face value of the bills of exchange. This broad outline of the relationship between the parties was not seriously challenged by Ocean Gourmet.

It was the case for Hatton Bank that Ocean Gourmet, having accepted the bill of exchange and thereby securing for itself the title documents to the goods covered by the bills of exchange (and the goods themselves), were now seeking to secure a further benefit by alleging that the bills of exchange were not valid. In other words, Ocean Gourmet was seeking to obtain the goods without paying for them. Mr Chacko submitted that Ocean Gourmet, having obtained the benefits under the bills of exchange, would be estopped from denying the validity of the said bills.

In support of his submissions, Mr Chacko drew attention to the cases of **Comitti v Maher** [1905] 94 LT 158 and **Roe v The Mutual Loan Fund Ltd** [1887] 19 QBD 347. In ***Roe*** , Lopes LJ said:

> *The whole conduct of the plaintiff shews that he treated the bill of sale as valid in order to obtain an advantage. Notwithstanding which, he now turns round and seeks to treat it as bad, and so to obtain a further advantage. The case is within the words which have been already quoted of Honyman J in* ***Smith v Baker****. I am also of opinion that the doctrine of estoppel laid down in* ***Pickard v Sears*** *applies. Lord Denman there said, `The rule is clear that where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.` That seems to me entirely application to the present case.*

The words of Honyman J in **Smith v Baker** [1873] LR 8 CP 350 , referred to by Lopes LJ are also very apt. Honyman J said:

> *A man cannot at the same time blow hot and cold. He cannot say at one time that the transaction is valid, and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and at another time say it is void for the purpose of securing some further advantage.*

Comitti followed Roe. Although the cases of ***Comitti*** , ***Roe*** and ***Smith v Baker*** relate to bills of sale, the principles enumerated therein are, in my view, equally applicable to similar situations arising under bills of exchange.

Bank of England v Vagliano Bros [1891] AC 107 is a decision of the House of Lords that deals with invalid bills of exchange. Vagliano were merchants who had in their employ a dishonest clerk. The clerk forged various documents and presented them to Vagliano as bills of exchange for their acceptance. These bills of exchange related to fictitious trades and fictitious payees. Without being aware of the fraud being practiced on them, Vagliano accepted these bills of exchange. The clerk then presented these bills to the bank for payment on the pretence that he was the named payee on

these bills of exchange. The bank, unaware of the fraud, paid out on these bills in accordance with the usual arrangements between Vagliano and the bank. When Vagliano discovered the fraud, they sought to argue that the bank ought not to have debited the bills from their accounts as the bills were not valid bills of exchange. The House of Lords held that Vagliano was estopped from challenging the validity of the bills of exchange. Even though in law they were not valid bills of exchange, Vagliano was estopped from asserting their validity as against the bank as Vagliano had, by accepting these bills, effectively presented to the bank that they were valid bills of exchange.

On the facts here, Ocean Gourmet, having secured the advantage of obtaining the goods by signing their acceptance on the bills of exchange, cannot now claim that the bills of exchange that they signed were not valid bills. I therefore upheld the decision of the assistant registrar and dismissed the appeal with costs.

Outcome:

Appeal dismissed.