UCO Bank v Golden Shore Transportation Pte Ltd
[2004] SGHC 185

Case Number : Suit 1582/2001

Decision Date : 25 August 2004

Tribunal/Court : High Court

Coram : Thian Yee Sze SAR

Counsel Name(s) : Bazul Ashhab/Karnan Thirupathy (T S Oon & Bazul) for the plaintiffs; Toh Kian Sing/John Seow (Rajah & Tann) for the defendants

Parties : UCO Bank — Golden Shore Transportation Pte Ltd

25 August 2004 :

SAR Thian Yee Sze

GROUNDS OF JUDGMENT

This was an application by the plaintiff for summary judgment against the defendant for the value of cargo under four bills of lading in the sum of USD556,514.08 or in the alternative, interlocutory judgment with damages to be assessed. At the outset, parties agreed that the arguments before me would be confined to the application in Suit 1582 of 2001 (there were three other similar applications in Suit 1583 of 2001, Suit 56 of 2002 and Suit 184 of 2002).

The facts

2 The background of the case has been elaborated on in detail by the Court of Appeal in its decision (in [2003] SGCA 43) on an application for a stay of proceedings in favour of India on the ground that there was an exclusive jurisdiction clause, which was dismissed by the court. It would suffice to highlight the salient facts relevant to the application before me.

3 This is an action for the wrongful delivery of cargo without the production of relevant bills of lading ("B/Ls"). The plaintiff ("UCO") is a foreign bank incorporated in India carrying on a banking business in Singapore through a branch. The defendant ("Golden Shore") is the owner of the vessel, "ASEAN PIONEER", whose master issued the B/Ls in question in respect of cargo comprising logs shipped from Malaysia to India. Various shippers of the cargo sold logs to SOM International Pte Ltd ("SOM"). SOM arranged for one set of cargo to be shipped on board the "ASEAN PIONEER" from various East Malaysian ports to the Port of Kandla in India. SOM was a customer of UCO. To pay for the cargo, UCO issued negotiable letters of credit ("L/Cs") in favour of the shippers on SOM's application. It is important to stress that each B/L stated that the consignee was "TO ORDER OF UCO BANK SINGAPORE". The notifying parties were SOM and UCO.

4 Between December 2000 and January 2001, the shippers separately presented the documents called for under the L/Cs, including the B/Ls issued by Golden Shore, through their negotiating bank, HSBC, at the latter's different branches. However, the shippers did not indorse any of the B/Ls, either in blank or specifically, in favour of HSBC. HSBC then presented the documents, including the B/Ls, to UCO as the issuing bank, for reimbursement. Once again, HSBC did not indorse the B/Ls, either in blank or specifically, in favour of UCO. UCO paid out a total of USD556,514.08 to various branches of HSBC.

5 In the meantime, and without the knowledge of UCO, SOM procured the issuance of a second set of B/Ls ("the switched bills") by promising Golden Shore that the original B/Ls would be returned

to them. SOM provided a letter of undertaking in this regard. In the switched bills, SOM was named as the shipper. However, the original bills (which were held by UCO) were never returned to Golden Shore as promised. The switched bills were transferred by SOM to buyers in India. When the "ASEAN PIONEER" arrived in Kandla, India, on or about 15 January 2001, the cargo was delivered to the various Indian receivers upon presentation of the switched B/Ls.

6 Despite several requests by UOC to SOM for repayment of the sums under the L/Cs, SOM did not do so. On 21 June 2001, Golden Shore wrote to UCO to ask for the return of the original B/Ls. UCO reserved their rights against Golden Shore. Subsequently, on 20 December 2001, UCO instituted the present action against Golden Shore for damages for breach of its duty to the plaintiff as bailiffs and/or carrier under the contract of carriage contained in or evidenced by the original B/Ls by wrongfully delivering the cargo on the presentation of the switched B/Ls.

Whether UCO has the title to sue – whether it is the lawful holder of the four bills of lading

7 At the summary judgment application before me, Golden Shore's counsel applied for the court to determine a point under Order 14 r 12 as to whether UCO had the title to sue under the original B/Ls. As the right to suit was a condition which UCO had to satisfy before it could lay claim to its substantive rights, if any, in the entire action, I directed that parties make full submissions on this point.

8 Whether UCO had the title to sue depended on whether it was the lawful holder of the four original bills of lading. To that we turn to the Bills of Lading Act (Cap 384) ("the Act"), which sets out the statutory framework for determining the rights of suit. Section 2(1) states:

> 2(1) Subject to the following provisions of this section, a person who becomes –
>
> The lawful holder of a bill of lading;
>
> …
>
> shall (by virtue of becoming the holder of the fill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.

Section 2(1) is worded in the same way as section 2(1) of the United Kingdom's Carriage of Goods by Sea Act 1992 ("the UK Act"). The UK Act adopted their Law Commissions' recommendations regarding the rights of suit. With this, the title to sue derives from enquiring whether the bill of lading is lawfully held, rather than by examining how or when the property passed.

9 When then, does a person become a *lawful holder* of a bill of lading under section 2(1)? Section 5(2) defines the holder of a billing of lading as:

> (a) a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;
>
> (b) a person with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill;
>
> (c) …

> and a person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith.

Essentially, lawful holders are consignees in possession (section 5(2)(a)) or indorsees with possession of the bills of lading by way of delivery and holders of bearer bills (section 5(2)(b)). Once a person become a lawful holder of the bill of lading, the rights of suit under the contract of carriage is transferred to and vested in him.

10 Both parties did not dispute that the four original B/Ls in contention were order bills of lading. The commentary in *Carver on Bills of Lading* (1st Edition, 2001), gives a succinct description of the characteristics of the two types of order bills in paragraph 1-004:

> An order bill is one which provides for delivery of the goods to be made to the order of a person named in the bill. Such bills are of two kinds. The first provides for delivery of the goods to a named consignee or to his "order or assigns" … The second simply makes the goods deliverable "to order or assigns" … without naming a consignee. The first kind of order bill is said to be made out to the order of the consignee, for on the face of the bill it is the consignee who is entitled (if he does not wish the goods to be delivered to himself) to order the goods to be delivered to another person. In the case of an order bill of the second kind, no person is on the face of the bill entitled to give such orders and it is the shipper who is entitled to give orders to the carrier with respect to the person to whom or to whose order the goods are to be delivered …

In paragraph 1-012, the authors of *Carver* add:

> It should be added that even where a bill of lading is made out to the order of a named consignee, the shipper may, nevertheless, be entitled to require the carrier to deliver the goods to another person.

The four original B/Ls were order bills to a named consignee, UCO.

11 Counsel for UCO contended that, as UCO was the named consignee in the order bills, section 5(2)(a) applied as UCO was in possession of the B/Ls. Counsel for Golden Shore argued, on the other hand, that the relevant provision was section 5(2)(b) and not section 5(2)(a) as the latter provision only applied if the B/Ls were directly delivered by the shipper to UCO as the named consignee. In this case, however, the shipper purported to transfer the title in the B/Ls to HSCB, and not UCO. The answer to this turned on the court's interpretation of the scope of sections 5(2)(a) and (b).

12 As mentioned earlier, section 5(2)(a) applies to a case of a named consignee with possession of the bill. In *East West Corp v DKBS 1912* [2003] 1 Lloyd's Rep 239, which was a case regarding section 5(2) of the UK Act (the wording of which is identical to our section 5(2)), the claimant shippers contended that they had title to sue in that they had retained their rights of suit as shippers and these had not been transferred to the Chilean banks even though the banks were named as consignees in the order bills and the banks had obtained physical possession of the bills of lading from the claimants. The English Court of Appeal held that the express consignment of the goods under the bills to the Chilean banks or order, followed by the delivery of such bills to the banks by or under the authority of the claimants, equated with a personal indorsement. Lord Justice Mance enunciated this at page 247 of the judgment:

> I there agree with the Judge that the respondents' (claimants') rights of suit under the contracts of carriage were transferred to the Chilean banks when they became holders of the bills delivered to them ***by or with the authority of the respondents*** (emphasis mine).

In our present case, the original B/Ls were delivered to UCO by HSBC and *not* the shippers. It also could not be said that HSBC delivered the bills to UCO with the authority of the shippers. This is in contrast to the situation in *East West Corp*, where the bills were delivered by the shippers to the named consignees, in which case, section 5(2)(a) operated and the Chilean banks became the lawful holders of the bills.

13 UCO's contention implied that so long as a named consignee came into physical possession of the order bill, the title to sue was transferred regardless of how the consignee came into possession of the bill. Mere delivery of the bill, through whatever mode, sufficed. With respect, I could not agree. In *Aegean Sea Traders Corp v Repsol Petroleo S.A. (The Aegean Sea)* [1998] 2 Lloyd's Rep 39, X sold oil to Y, who resold it to Z. By mistake, X indorsed the bill of lading to Z instead of Y, and sent it to Y. Y forwarded it to Z, who then returned it to X. It was held that Z was not a lawful holder of the bill merely as a result of its having been sent to him by post. The court opined that the bill was delivered to Z not by X (the indorser of the bill) but by Y, such that there was no delivery of the bill by X to complete the indorsement. Although this case was a dispute on the interpretation of section 5(2)(b) of the UK Act, it gives guidance as to the mental element required before delivery or possession is effected.

14 On my reading of the above two cases, it is evident that there is an underlying assumption that delivery to the named consignee in section 5(2)(a) or the indorsee in section 5(2)(b) is to be made by the shipper in section 5(2)(a) or the indorser in section 5(2)(b). The delivery of the bills must be made by the shipper, and not by any intermediary party. Hence, I found that section 5(2)(a) was not applicable as delivery of the order bill to UCO was not made by the shippers.

15 Having found that UCO did not become a lawful holder of the original B/Ls by virtue of section 5(2)(a), I turned to the question of whether section 5(2)(b) assisted UCO in this regard. Section 5(2)(b) lays down two pre-requisites before a person becomes a holder of a bill of lading. First, the person must be indorsed with the bill. Second, the person must be in possession of the bill by delivery. The original B/Ls were not indorsed to HSBC by the shippers – they were merely delivered to HSBC (it should be noted that similarly, when HSCB forwarded the B/Ls to UCO, there was no indorsement made by HSBC). It is trite law that a person can only become a lawful holder of a bill of lading if there is an appropriate indorsement – see *Keppel Tatlee Bank v Bandung Shipping* [2003] 1 Lloyd's Rep 619. Accordingly, HSBC did not become a holder of the B/Ls under section 5(2)(b). The logical conclusion that followed was that UCO too could not have been a holder of the B/Ls by definition since HSBC had no title to transfer in the first place.

16 Section 2(1) did not operate in the circumstances as UCO never became a holder of the four original B/Ls. As the title to sue never vested in UCO, they did not have the *locus standi* to institute this action either in contract or the tort of conversion or negligence against Golden Shore. The rights to suit remained with the shippers.

17 For the reasons above, I dismissed UCO's application for summary judgment and struck out their action on the ground that they did not have the *locus standi* to commence the action. The cost of this application and the action is awarded in favour of the defendant, Golden Shore, and payable by the plaintiff, UCO, to be agreed or taxed.

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