Orix Leasing Singapore Ltd v Koh Mui Hoe and Others
[2008] SGHC 212

Case Number : Suit 740/2006

Decision Date : 17 November 2008

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Prem Gurbani and Bernard Yee (Gurbani & Co) for the plaintiffs; Justin Phua Hoon Chong (Justin Phua Tan & Partners) for the first and second defendants; Chung Ping Shen (HA & Chung Partnership) for the third and fourth defendants

Parties : Orix Leasing Singapore Ltd — Koh Mui Hoe; Ink Trading Pte Ltd; Kenzone Logistics Pte Ltd; Tat Seng Machine Movers Pte Ltd

Tort – Conversion

17 November 2008 Judgment reserved.

Judith Prakash J:

Background

1 This is the second action for conversion commenced by the plaintiff, Orix Leasing Singapore Limited, in respect of its dealings with a company called Rav Graphic Pte Ltd ("RGPL"). The first action was Suit No 739 of 2006 ("suit 739").

2 The plaintiff is in the business of acquiring and letting out heavy machinery on hire purchase terms. In 2005, the plaintiff acquired three machines which it subsequently hired out to RGPL. There were three separate hire purchase agreements, one for each of the machines. These were, respectively, a Heidelberg 4 Colour Offset Press machine bearing serial number 627179 (the "Heidelberg 4C"), a Mitsubishi 4-Color Sheetfed Offset Press (the "Mitsubishi 4C") and a Mitsubishi 5-Color Sheetfed Offset Press (the "Mitsubishi 5C"). This action concerns the Heidelberg 4C whilst suit 739 concerned the Mitsubishi 4C.

3 In September 2006, the plaintiff discovered that all three machines had been removed from RGPL's premises, without the plaintiff's knowledge or consent. The plaintiff subsequently learned that RGPL, acting through its director, Tan Kim Seng Crispian ("Crispian Tan"), had unlawfully sold these machines to third parties.

4 This action was commenced in November 2006 and by it the plaintiff sought to make four different parties responsible for conversion of the Heidelberg 4C. The second defendant was Ink Trading Pte Ltd ("IPTL"), a Singapore company carrying on business as a dealer in printing machinery, and the first defendant, Koh Mui Hoe ("Mr Koh"), is a director of and the moving spirit behind IPTL. The other two defendants, Kenzone Logistics Pte Ltd ("Kenzone") and Tat Seng Machine Movers Pte Ltd ("Tat Seng"), are companies in the logistics business in Singapore.

5 The plaintiff's statement of claim was quite straightforward. The material paragraphs read as follows:

> 5. On a date unknown to the Plaintiffs, but sometime in August/September 2006, the 1st

Defendant acting on his own or as a director of the 2nd Defendants unlawfully caused the machine to be removed from Rav Graphic's premises at 50 Toh Guan Road East, #02-01, Quek Industrial Building, Singapore 608587 by arranging with the 3rd Defendants and/or the 4th Defendants to do so.

6. The 3rd Defendants and/or the 4th Defendants then proceeded to remove the machine from Rav Graphic's premises and delivered the same to persons unknown.

7. In the premises, the 1st, 2nd, 3rd and 4th Defendants have converted the machine to their own use.

6 This action and suit 739 were heard before me at the same time. Suit 739 was originally commenced against four defendants who included IPTL and Mr Koh. In the course of the proceedings, however, the plaintiff dropped its claim against the other defendants and proceeded only against IPTL and Mr Koh. In this action, in the course of the trial, the plaintiff dropped its claim against IPTL and Mr Koh and proceeded only against Kenzone and Tat Seng. Many of the witnesses were common to both actions. By an order of court made on 15 November 2007, the parties were given leave to use the evidence adduced in suit 739 for the present action and *vice versa*. Since only Kenzone and Tat Seng remained as defendants at the end of the trial, in this judgment when I refer to the defendants without further specification, I should be taken as referring to only Kenzone and Tat Seng.

The issues

7 In the course of the trial, the plaintiff applied to amend its statement of claim to delete the allegation in para 5 of the statement of claim that IPTL and Mr Koh had arranged with Kenzone and Tat Seng to remove the machine from RGPL's premises. To replace that allegation, para 6 of the statement of claim was amended to read:

6. Further or in the alternative, the 3rd Defendants and/or the 4th Defendants removed the machine from Rav Graphic's premises on or about 31 August 2006 and delivered the same to persons unknown.

Thus the averment was that Kenzone and Tat Seng had acted independently of Mr Koh and IPTL but had still converted the machine because they had removed it from the premises and delivered it to unknown persons.

8 Kenzone and Tat Seng were represented by the same lawyer but filed separate defences. The basic tack taken by each of them was the same. They accepted that they had been involved in transporting the Heidelberg 4C from RGPL's premises but denied that such actions made them liable to the plaintiff in conversion. They said they were simply transporters: they had taken the Heidelberg 4C from RGPL and had returned it to RGPL. Therefore, the acts carried out by them were ministerial in nature and they could not be held responsible for the loss of the Heidelberg 4C.

9 In their closing submissions, the defendants summarised their case as follows:

(a) the plaintiff had not proven, on a balance of probabilities, that the defendants had converted the Heidelberg 4C to their own use;

(b) the defendants had proven, on a balance of probabilities, that their acts of carriage or storage of the Heidelberg 4C were merely ministerial and/or were performed in good faith and

without notice of its true ownership; and

(c) the defendants had also proven, on a balance of probabilities, that they had returned the Heidelberg 4C to RGPL, the ostensible owner, as represented by Crispian Tan, and in so doing had acted only ministerially by changing the position of the machine but not the property in the machine.

10 The defendants submitted that the material issues before the court are as follows:

(a) Whether the defendants had acted in good faith in their acts of carriage and storage of the machine;

(b) Whether the defendants had notice of the true ownership of the machine;

(c) Whether the defendants had acted ministerially; and

(d) Whether the defendants handed the machine back to the apparent owner, RGPL.

11 The defendants formulated their issues on the basis of the holding of the English Court of Appeal in the case of *Marcq v Christie Manson & Woods Ltd* (trading as "*Christie's*") [2003] WLR 980 ("*Christie's* case"). The plaintiff there was the owner of an oil painting which had been stolen from his house in 1979. Some eighteen years later, in 1997, the defendants, a firm of auctioneers, took possession of the painting from a prospective seller, S, who instructed them to sell it at auction. The defendants put the painting up for auction but it was not purchased and they thereafter returned it to S. The plaintiff sued the defendants claiming damages for conversion and bailment. The English Court of Appeal upheld the dismissal of the action by the trial judge on the basis, *inter alia*, that an auctioneer who accepted goods for sale in good faith and without notice of their true ownership would be liable for conversion to the true owner if he sold and delivered the goods to a buyer, since that would involve interfering with the title or ownership of the goods, but if he returned them unsold to the prospective seller he acted only ministerially by changing the position of the goods, not the property in them, and therefore would not be liable in conversion.

12 The judgment of the court was delivered by Tuckey LJ. In the course of his judgment, his Lordship quoted Lord Nicholls of Birkenhead's summary, in *Kuwait Airways Corpn v Iraqi Airways Co* [2002] 2 AC 883 ("*Kuwait Airways*"), of the three essential features of the tort of conversion, *viz*, that the defendant's conduct must be inconsistent with the rights of the owner, second that the conduct must be deliberate and third that the conduct must be so extensive an encroachment on the right of the true owner as to exclude him from use and possession of the goods. Tuckey LJ pointed out that in *Christie's* case, it was the third feature that gave rise to the plaintiff's argument that the defendants were liable in conversion having regard to the extent of their encroachment on the plaintiff's right as owner of the painting. He then went on to cite the case of *Consolidated Co v Curtis & Son* [1892] 1 QB 495, a case of an auctioneer who had sold and delivered goods which were the subject of a bill of sale. It was held that an auctioneer who sells and delivers is liable because he is acting more than a mere broker or intermediary. Commenting on this judgment, Tuckey LJ (at p 989) emphasised the point that it is interference with the title or ownership of the chattel which counts for conversion. His conclusion, after completing an examination of the relevant authorities, was that (at p 991):

24. … an auctioneer who receives goods from their apparent owner and simply redelivers them to him when they are unsold is not liable in conversion provided he has acted in good faith and without knowledge of any adverse claim to them. … The auctioneer intends to sell and if he does

so will incur liability if he delivers the goods to the buyer. But his intention does not make him liable; it is what he does in relation to the goods which determines liability. Mere receipt of the goods does not amount to conversion. In receiving the goods from and redelivering them to their apparent owner the auctioneer in such a case has only acted ministerially. He has in the event merely changed the position of the goods and not the property in them.

13 The defendants submitted that the decision reached in *Christie's* case was a crystallisation of the principles laid down by the line of authorities derived from the "agents' cases". In this respect, counsel cited paragraph 17-71 of *Clerk & Lindsell on Torts* (Sweet & Maxwell, 19th Ed, 2006) which states as follows:

> **17-71 Agent not intending to alter property**. If an agent intermeddles merely with the custody of a chattel in ignorance of his principal's lack of title and also in ignorance that any alteration of property is intended, he is not guilty of a conversion.
>
> > "The true proposition as to possession and detention and asportation seems to me to be, that a possession or detention which is mere custody or mere asportation made without reference to the question of the property in goods or chattels is not a conversion."
>
> On this principle a forwarding agent who packs and ships goods does not render himself liable because his employer had no title, apparently because his act is so purely ministerial that, if performed in good faith and without notice, no presumption of a conversion can be raised therefrom.

14 The plaintiff asserted that the court had to be guided by the principles as declared in *Kuwait Airways*. Its position was straightforward. It said in effect: "I am the owner of the machine. You took the machine away from where it was kept and did so without my authority. The machine disappeared thereafter and has not been found. You had it and you have to prove that you did not convert it". That is no doubt correct. However, there is a long line of cases re-affirmed in *Christie's case* that dealing with goods without changing the property in them will not amount to conversion whatever the authority of the person giving instructions to the dealer was. The limitation on this principle is that the dealer must have acted in good faith and without knowledge of the adverse claim. On this basis, there is essentially one issue for me to decide and that is whether the defendants' account of how they handled the machine and acted in good faith has been proven to be true on a balance of probabilities. If so, then they would have established that their actions were purely ministerial and thus they cannot be made liable for conversion.

The defendants' account

15 The following persons gave evidence for the defendants:

(a) Crispian Tan;

(b) Heng Khim Soon ("Mr Heng"), a director of Kenzone;

(c) Yap Leng Huat, known to everyone as Mark Yap, Kenzone's operational manger;

(d) Leu Sin Chan ("Mr Leu"), Kenzone's operations supervisor;

(e) Siew Shu Ping ("Ms Siew"), a manager of Tat Seng who is also the daughter of its managing director, Siew Kian Nam;

(f) Then Chiew Nyet ("Ms Then"), a member of Tat Seng's administrative staff; and

(g) Lim Beng Young, also known as Colin Lim, a director of a company called Hock Cheong Transport Co (Singapore) Pte Ltd ("Hock Cheong").

16 In this account of what happened according to the defendants, I will be summarising their stories as they appear from the affidavits of evidence-in-chief which their witnesses filed.

17 Prior to August 2006, RGPL was carrying on its printing business at premises in Quek Industrial Building in Toh Guan Road East. All its printing machines, including the three that it had hired from the plaintiff were located there. According to Crispian Tan, between 2004 and 2006, he had on occasion used the services of Kenzone to transport RGPL's finished goods to its customers but he had not used Kenzone to transport machines or heavy equipment. He had no dealings at all with Tat Seng during this period.

18 In August 2006, Crispian Tan was looking for contractors to transport RGPL's machines and equipment from its existing premises to new premises at Bendemeer Road. According to the correspondence he produced, he had agreed with RGPL's landlord that RGPL would vacate its premises at Quek Industrial Building no later than 31 August 2006. In the meantime, RGPL had secured a tenancy of premises at Blk 994, Bendemeer Road. According to the letter of offer from the landlord, JTC, the new lease was to commence on 10 September 2006.

19 According to Crispian Tan, in early August 2006, he approached Mr Heng of Kenzone to help him shift RGPL's office furniture and equipment, and its raw material and finished goods from Quek Industrial Building to the new premises in Bendemeer Road. Mr Heng agreed and deputed Mark Yap to handle the job. After inspecting the premises, Mark Yap gave Crispian Tan a quotation. It was agreed that the cost of the services would depend on the number of trips that Kenzone had to run to complete the move. Crispian Tan told Mark Yap that the move had to be completed prior to 31 August 2006 as the lease was expiring. Eventually, 12 trips were carried out between 19 August 2006 and 30 August 2006 and the total bill came up to about $2,961.50.

20 In suit 739, Crispian Tan had asserted that one Mr Mani, a Malaysian Indian, had purchased the Mitsubishi 4C from him in March 2006. In this action, Crispian Tan said that Mr Mani, accompanied by "an unidentified male Chinese" visited RGPL again in August 2006 to inspect the Heidelberg 4C. Thereafter, they negotiated and agreed on a sale price for the same. Crispian Tan told Mr Mani that RGPL was handing over its premises by 31 August 2006 and moving to new premises. As Mr Mani's transporters would not be able to arrive before that date, Crispian Tan agreed with Mr Mani that the latter would get his men to dismantle the Heidelberg 4C whilst RGPL would arrange for the removal of the machine to another place for storage until such time as Mr Mani could arrange for its transportation. It was agreed that Mr Mani would pay a deposit of 50% of the purchase price and the balance after delivery.

21 Crispian Tan then contacted Colin Lim from Hock Cheong and enquired whether Hock Cheong had space to store RGPL's machinery for about a week or so pending his further instructions. He told Colin Lim that it would be a few pallets' worth of goods. Colin Lim then confirmed that the machines could be stored in Hock Cheong's warehouse at Blk 1767, Geylang Bahru, Kallang Distripark.

22 On or about 26 August 2006, Crispian Tan asked Mark Yap whether he could arrange for the transport of two machines to Hock Cheong's premises. These were the Heidelberg 4C and a smaller machine, known as a folding machine. His boss, Mr Heng, told Mark Yap that Kenzone did not have the heavy lorries needed to transport big machines and suggested that he approach specialist movers

of industrial machines for help. Mr Heng gave Mark Yap the names of some possible sub-contractors. Tat Seng was one of these. Following Mark Yap's approach to Tat Seng on 28 August 2006, Siew Kian Nam and Ms Siew met Mark Yap at RGPL's premises to survey the two machines that had to be moved. Mark Yap noticed that the Heidelberg 4C was "enormously huge and long in line …. it looked like an assembly line in a factory".

23 During the inspection, Mark Yap explained to the Siews that RGPL required the machines to be moved to a warehouse at Kallang Distripark and needed to carry out the move by 31 August 2006 at the latest. Ms Siew commented that they were very familiar with the address as Tat Seng also had a storage area in the same area and therefore it would not need to do a site survey. She also said that the cost of transport would be lower since the destination was on the ground floor. Later that day, Ms Then contacted Mark Yap and informed him that Tat Seng would charge $3,500 for the move but would not carry out the dismantling of the machines. Tat Seng could effect the transportation on 31 August 2006 but, since this was the first time it was dealing with either Kenzone or RGPL, it required payment to be in cash. Mark Yap checked with Crispian Tan who accepted the quotation and instructed him to go ahead.

24 On 31 August 2006, when Mark Yap arrived at RGPL's premises, he saw that the Heidelberg 4C had been dismantled but was still resting in its original position in the production area. Shortly thereafter loading of the two machines (*ie*, the Heidelberg 4C and the folding machine) began. Tat Seng originally sent two lorries for the transportation but these proved insufficient and in the afternoon a third lorry was despatched to help. Altogether the loading took five to six hours and the machine parts had to be loaded onto the three lorries with the help of the lorry cranes. By the time the vehicles moved out of RGPL's premises, it was about 5pm.

25 At about 6pm that same evening, Mark Yap received a call from Tat Seng's driver, a man named Kenny. Kenny told him that the convoy had arrived at Hock Cheong's premises but that Colin Lim did not want to receive the cargo. Mark Yap then spoke with Colin Lim and the latter stated that the machines were too big and his warehouse did not have space for them. Colin Lim explained in his affidavit that when the three trucks carrying the machines from RGPL arrived at the front of his warehouse, he was present and it was immediately obvious to him that the total load far exceeded the two pallets' load which Crispian Tan had told him about. He refused to accept the machine parts for storage. He called Crispian Tan and told him that when he had agreed to the storage, he was not expecting three truck loads of machine parts and could not accept them due to insufficient space. Crispian Tan asked him to help but Colin Lim was unable to do so and told him that an alternative space for the machines had to be found.

26 Crispian Tan turned to Mark Yap for help again. The latter contacted Ms Siew and asked her to see if Tat Seng could find any temporary storage space for the machines for about a week. Half an hour later, Ms Siew informed Mark Yap that Kenzone could store the machines at Tat Seng's storage area which was an open yard in Kallang Distripark. Mark Yap was concerned that the machines might get wet if it rained. After consulting with her father, Ms Siew told him that Tat Seng was prepared to store the smaller folding machine at its warehouse at Blk 1050, Eunos Avenue 7, #01-147, Singapore 409581. As for the Heidelberg 4C, the open yard storage area was the best that Tat Seng could offer. He then asked her whether Tat Seng could cover the Heidelberg 4C with canvass and mount it on pallets so as to raise it above the ground a little and protect it from damage. She agreed.

27 Mark Yap contacted Crispian Tan immediately and explained the situation and his discussions with Ms Siew to the latter. Crispian Tan told him that there was no choice and asked him to proceed. Mark Yap conveyed this decision to Tat Seng. Immediately thereafter, Ms Siew arranged for the trucks to unload the Heidelberg 4C and its accessories at the open yard whilst the smaller machine

was taken back to her Eunos office cum warehouse.

28 Some time on 31 August 2006, Crispian Tan met with the unidentified Chinese male who had made a trip to pay half the purchase price as previously agreed.

29 On 3 September 2006, Mr Mani called Crispian Tan and told him that his transporters were ready and wanted to move the Heidelberg 4C on 4 September 2006. The next morning, Crispian Tan contacted Mark Yap and asked him to inform Tat Seng that the machine was to be moved from its yard. Mark Yap duly informed Ms Siew of the proposed move and said that payment of Tat Seng's charges would be made at the same time. Ms Siew responded that Tat Seng would hand the machine back to RGPL that evening at 6pm.

30 At about 5pm on 4 September 2006, Crispian Tan met Mark Yap at Tat Seng's premises in Kallang Distripark. After checking that the Heidelberg 4C and the various machines parts were in order, Crispian Tan handed cash of $3,500 to Mark Yap for him to pay to Tat Seng. At about 6pm, two trailers came to pick up the Heidelberg 4C. Crispian Tan personally supervised the loading of the machine and its various parts onto the trailer and that, he said, was the last time he ever saw the Heidelberg 4C. As far as the folding machine was concerned, he contacted the financier who had given him the machine on hire purchase and asked it to collect the folding machine from Tat Seng's premises as RGPL could no longer continue to service the hire purchase instalments. Subsequently, the balance of the payment for the Heidelberg 4C was received by Crispian Tan from the unidentified Chinese man.

31 According to her affidavit, after receiving Mark Yap's call on 4 September 2006 about the redelivery, Ms Siew instructed her clerk Ms Then to prepare the delivery orders for the two machines as Mark Yap was going to pay Tat Seng's charges that day. At about 7pm that evening, Mark Yap went to Tat Seng's Eunos office and settled the bill for the transportation by paying Ms Siew's father $3,500 in cash. He had, however, forgotten to take his company's stamp with him and he told Ms Siew that he would take the delivery orders back with him so that they could be stamped and he would thereafter send them back to her. According to Ms Siew, sometime on 20 October 2006, Mark Yap telephoned her and apologised for misplacing the delivery orders. He asked her to fax him a copy of the same so that he could chop them and sign them as he was also closing Kenzone's file on the transaction. Ms Siew agreed. She sent him the delivery orders by fax and subsequently Tat Seng received them duly signed by Mark Yap and stamped with Kenzone's stamp.

32 Ms Then confirmed in her affidavit that she was the one who had prepared the delivery orders. To the best of her recollection, sometime on 4 September 2006, she was instructed by Ms Siew to prepare the delivery orders as Mark Yap was coming down to make payments. As the date of delivery was 31 August 2006, Ms Then had drawn up the delivery orders using that date. At that time, she knew that there were parts of the machine that had been stored in the Eunos premises. She therefore drew up the two delivery orders to state that the machines had been delivered to the Eunos address when, in actual fact, only the folding machine was stored in the Eunos premises whilst the other one was in the Kallang Distripark storage area. She said that the error was clearly her mistake and it was made inadvertently as she did not know what machines Ms Siew and Mark Yap were talking about. She was aware that Mark Yap went to the Eunos office late in the evening on 4 September 2006 to pay the bill. However, he did not bring his company stamp so he told the managing director that he would send the delivery orders back to Tat Seng once the stamp had been affixed on them.

33 Mark Yap also dealt with this issue of the delivery orders in his affidavit. He said that when he had been asked on 4 September 2006 to sign Tat Seng's delivery orders, he told Ms Siew that he had

forgotten to bring the Kenzone company stamp with him. He promised her that he would either send or fax back the delivery orders once he had had the documents stamped. Subsequently, around 16 October 2006, Kenzone's accounts department asked him whether the RGPL job had been completed and whether the file was to be closed for billing. It was then that he realised that he had not submitted the job detail to the accounts department for them to prepare the bill because he had totally forgotten about it. He immediately contacted Crispian Tan and after working out the figure with him, Crispian Tan agreed to go to Kenzone's offices the next day to make payment.

34 On 17 October 2006, Crispian Tan met Mark Yap at Kenzone's offices. Mark Yap explained once again that there had been a total of 12 trips made, six trips by six-tonne trucks and another six by ten-tonne trucks. Further, Kenzone was charging RGPL for manpower supply plus the shifting cost of a "strapping machine". The total bill came up to $2,820 (excluding GST) and Crispian Tan paid it in cash. Kenzone's accounts department then printed out an invoice and a copy of the invoice was given to Crispian Tan. On 20 October 2006, Mark Yap told Ms Siew that he had misplaced Tat Seng's delivery orders and asked for copies of the same. She agreed and he then signed and stamped the delivery orders and returned them to her by fax.

35 Mark Yap further explained that between August and December 2006 he was busy trying to get used to his operational duties and was preoccupied with problems regarding a shortage of drivers and negotiations for a particular project which Kenzone was trying to secure. Kenzone managed to secure this project on 1 January 2007. Mark Yap stated that "on hindsight", he "realised that [he] had overlooked the billing to Rav Graphic during this period of time". Partly this was due to his relative inexperience in operational duties and the time taken up by the new project. Furthermore, the RGPL job was a relatively minor transportation job which was similar to the hundred of jobs that he was overseeing on a daily basis and, once the job was done, he had concentrated on the huge project for the other customer.

The plaintiff's submissions

36 The plaintiff's position was that the defendants' stories as narrated above were not true. In the plaintiff's submission, RGPL never intended to engage Kenzone to do the office shifting job, but in fact engaged them to dispose of the Heidelberg 4C. The plaintiff did not accept that the defendants had simply moved the machine from one place to another for RGPL and thereafter handed it back to RGPL. In the plaintiff's submission, both defendants knew or had reason to believe that RGPL was not entitled to dispose of the Heidelberg 4C and also, they did not simply act as mere transporters of the machine.

37 The plaintiff's argument went as follows. First, it would have been unusual for Mark Yap to have given RGPL a verbal quote for the office shifting job. Mr Heng, Kenzone's managing director, had testified that Kenzone's procedure was to issue a written quotation after surveying the job. Moreover, RGPL did not issue any written acceptance of the alleged quote for the office shifting job. According to Mr Heng, Kenzone's normal procedure was to obtain the customer's confirmation of the quote given before proceeding with the job.

38 Second, the invoice identified by Mark Yap as being Kenzone's invoice for the office shifting job was not a genuine invoice. While Mark Yap asserted this invoice was generated when Crispian Tan voluntarily showed up at Kenzone's office on 17 October 2006 to pay Kenzone's bill, Crispian Tan's affidavit was completely silent on this alleged meeting on 17 October 2006 and the alleged payment made by him. In any event, the invoice was not admissible because the maker of the document was not called to prove the invoice. Mark Yap initially claimed that he was the maker of the invoice but, according to the plaintiff, he subsequently conceded that he was not.

39 Third, there was no evidence that Kenzone was engaged by RGPL to carry out the office shifting job: there was no written quotation, acceptance, delivery order(s), invoice or receipt for the alleged job. The alleged invoice was generated entirely to create the façade that Kenzone was engaged to shift RGPL's office. This façade had to be created because Kenzone knew that RGPL was not entitled to dispose of the Heidelberg 4C and disposal of this machine was why Crispian Tan had contacted Kenzone. Crispian Tan knew that Kenzone had the capability to do this.

40 Fourth, Mr Heng had confirmed in court that Kenzone could arrange for its sub-contractors to move large machines. According to Mr Heng too, Crispian Tan had contacted him personally to discuss the shifting of the Heidelberg 4C. There was no need for Crispian Tan to contact Kenzone's managing director simply to move the Heidelberg 4C from one location to another. According to Mr Heng, this sort of single trip transportation was usually handled by the operations supervisor. Thus the transportation of the Heidelberg 4C must have been more than simply moving the machine from one location to another.

41 Fifth, in court, Crispian Tan had denied that he instructed Kenzone to shift the Heidelberg 4C when he first contacted Mr Heng because, he said, he had already secured a buyer, namely Mr Mani. This assertion was, however, inconsistent with paragraph 32 of Crispian Tan's affidavit where he had stated that he was only contacted by Mr Mani *after* he had instructed Kenzone to carry out the office shift. According to the affidavit, therefore, at the time Crispian Tan first contacted Mr Mr Heng, he did not yet have a buyer for the Heidelberg 4C and would have had to shift the machines out of RGPL's premises. Moreover RGPL's production supervisor, Chua Soon Meng ("Mr Chua"), had testified that he only saw Mr Mani once in Singapore and that was when he had handed over the Mitsubishi 5C to Mr Mani sometime in May 2006.

42 Sixth, no written quotation was generated by Kenzone for the shifting of the Heidelberg 4C. That was unusual because, according to Mark Yap, quotations were usually generated and printed out from the company's computers. In fact, Mark Yap had said that even when he gave a verbal quotation, he would jot down the quote and pass a note to the accounts department for them to enter the data into the office computers for the purpose of generating an invoice later. The lack of written confirmation for the job from RGPL was also unusual because Kenzone's normal procedure was to obtain written confirmation before proceeding with the job.

43 Kenzone had tried to explain why no delivery order had been issued for the Heidelberg 4C. Mr Heng had said that when Kenzone sub-contracted a transportation job to a sub-contractor (in this case, Tat Seng), Kenzone would not issue a delivery order on which the recipient could acknowledge receipt of the goods, but would expect the sub-contractor to do so. Even if that was Kenzone's normal procedure, in this case when Kenzone realised that Tat Seng had not issued a delivery order for the Heidelberg 4C, Kenzone ought to have issued one itself, otherwise Kenzone would not have any document to prove that it had taken the Heidelberg 4C from RGPL and subsequently delivered it back to RGPL. It was also unusual that RGPL would allow Kenzone to take the Heidelberg 4C without insisting that Kenzone acknowledge taking custody of the machine. The unusual manner in which Kenzone allegedly dealt with RGPL in relation to the Heidelberg 4C suggested that Kenzone's involvement in the shifting of the machine was not done in good faith.

44 Furthermore, Mr Heng, Colin Lim and Crispian Tan had failed to disclose in their affidavits the crucial fact that they had known each other for many years and that Mr Heng and Colin Lim frequently referred business to each other's companies. That explained why, after contacting Mr Heng, the next person Crispian Tan allegedly contacted in relation to the Heidelberg 4C was their mutual friend Colin Lim to ask him to store the machine. Given Kenzone's close business relationship with Hock Cheong, it would not be surprising if it was Mr Heng who suggested that the machine be

stored in Hock Cheong's premises.

45 Next, there were peculiarities in the alleged sub-contract between Kenzone and Tat Seng. Tat Seng did not give Kenzone any written quotation in respect of the job and Kenzone itself did not confirm in writing that it accepted Tat Seng's quotation. The insistence by Tat Seng that it be paid in cash was a highly unusual condition. Kenzone, according to Mr Heng, had an annual turnover of $4.5m. There would be no reason why Tat Seng would need to insist on cash payments (and similarly no reason for Kenzone to agree to such a condition) from a company of this size. Ms Siew had said that Tat Seng insisted on cash payment because it wanted to insure that it was paid for the job. That reason was illogical because, according to Ms Siew's testimony in court, the Heidelberg 4C was handed back to Crispian Tan before Tat Seng collected payment. Once the machine was handed back, Tat Seng no longer had any way of insuring that it would receive payment. The only plausible reason why cash payment was insisted on was that the defendants wanted to hide the transaction. This was also shown by the fact that neither of the defendants issued any tax invoice or receipt for the payment received for the job even though they were both required to do so by law since they were both GST-registered enterprises.

46 The actions of the defendants after the plaintiff's private investigator started his investigations showed that they knew from the start that there was something amiss with the shifting of the Heidelberg 4C. This investigator, a man named Henry Tay, testified that he met Siew Kian Nam on 20 October 2006. Before that, Henry Tay had already gone to Tat Seng's premises once to interview Siew Kian Nam but was told that he was not in. It was because Tat Seng knew that Henry Tay would be questioning Siew Kian Nam about the shifting of the Heidelberg 4C that Tat Seng attempted to create a paper trail for the job by asking Kenzone on 20 October 2006 to sign and return the delivery orders to them. These delivery orders were clearly generated in great haste because Mark Yap, Ms Siew and Ms Then could not provide any coherent evidence on how they were generated.

47 Ms Then had said that she generated the two delivery orders on 4 September 2006, one for the Heidelberg 4C and the other for the folding machine. However the serial numbers of the two delivery orders were not in running order. Ms Then was not able to give a logical explanation to explain the inconsistency. Next, in this connection, Mark Yap testified that the delivery orders were given to him on 4 September 2006 and he took them back with him to his office so that he could affix the company stamp on them. Mark Yap also said that he asked for copies of the invoices to be faxed to him on 20 October 2006 because Tat Seng had kept chasing him for the delivery orders. These allegations were not in his affidavit, however. Further, Ms Siew's evidence contradicted Mark Yap's evidence. Ms Siew had said in her affidavit that she received a call from Mark Yap on 20 October 2006 and it was then that he asked for copies of the delivery orders so that he could stamp and sign the documents as he was closing his file. According to this version, therefore, Mark Yap had asked for the documents voluntarily and had not been chased by Tat Seng for copies of the same. It should be noted however, that Ms Siew changed her evidence during cross examination. A further discrepancy was that Ms Then had said that it was impossible for the delivery orders to have been faxed to Mark Yap on 20 October 2006 because Tat Seng did not keep any copies of the same. Ms Siew then contradicted Ms Then's evidence on this point.

48 In any case, even if these contradictions were disregarded, all that could be derived from the face of the delivery orders was that they were faxed by Tat Seng to Kenzone at about 3.45pm on 20 October 2006 and returned by Kenzone, by fax, a couple of minutes later. Clearly, Tat Seng was anxious that a set of delivery orders be generated before Siew Kian Nam met Henry Tay.

49 The plaintiff also sought to cast doubt on the defendants' assertion that the Heidelberg 4C and the folding machine were loaded onto three lorries belonging to Tat Seng and transported out of

RGPL's premises on 31 August 2006. Neither of Tat Seng's witnesses, *ie* Ms Siew and Ms Then, had been present when the machines were allegedly loaded and transported. They were therefore not able to testify that this move had taken place on 31 August 2006. The second part of the story, that the machines were taken to Hock Cheong's warehouse where Colin Lim refused to accept them, was not plausible. Colin Lim's testimony had been that he was shocked when he saw the three lorries carrying the machines since he had only been expecting a few pallets of machinery in accordance with what Crispian Tan had told him. Crispian Tan agreed that he had told Colin Lim that it was only one or two pallets' worth of machinery that needed to be stored and, under cross examination, said he had made a mistake when he estimated the size of the machine. He said that he was an experienced man in the printing industry in terms of marketing and getting the business, but in terms of the technical aspects he was not good and that was why he made the mistake as to the size of the machines. That explanation was completely implausible as this was a matter of size which could be estimated by physical observation. Even Mark Yap who saw the Heidelberg 4C for the first time when the Siews went to survey it, could observe that it was huge and more like a production line than a single machine. Thus, either Crispian Tan wanted to deceive Colin Lim (although why he should want to do so was a mystery since he wanted Colin Lim to store the machines for him and it was important for Colin Lim to know the size of the machines for this purpose) or the whole story about the machines being sent to Hock Cheong and then being rejected by Hock Cheong was totally untrue.

50 The third part of the story relating to what had become of the machines after Hock Cheong's rejection must also have been untrue. The Heidelberg 4C could not have been transported to Tat Seng's unsecured and unfenced yard in Kallang Distripark and left there for four days. This was because:

(a) it was implausible that a million-dollar machine would be left unguarded in an unfenced yard for days, particularly when numerous lorry-crane which could be used to steal the machine passed by the area every day;

(b) according to Tat Seng's own delivery order number 22230, the Heidelberg 4C was transported to Tat Seng's premises at Blk 1050, Eunos Avenue 7. Ms Then alleged that that was a mistake in the delivery order but she admitted in court that she did not know where the machine actually was and that it was the managing director, Siew Kian Nam, who said that the location of the Heidelberg 4C as stated in the delivery order was wrong. Neither Ms Siew nor Mark Yap, however, alleged that there was any error in the delivery order. In fact, Mark Yap confirmed that he had read both delivery orders and then signed them before returning them to Tat Seng. If the document itself was correct, then the Heidelberg 4C would have been stored in fact at Tat Seng's premises in Eunos; and

(c) storage of the Heidelberg 4C at the Eunos premises would be consistent with what Siew Kian Nam told Henry Tay. According to the latter, during his meeting with Siew Kian Nam on 20 October 2006, Siew Kian Nam told him that two container trailers from Malaysia came to pick up the Heidelberg 4C on 31 August 2006 from the site office and that before that, the machine was put on top of an open lorry which was parked on the side of one of the roads near his office in Eunos while they were waiting for RGPL's customers to take it away. Siew Kian Nam himself did not testify and dispute Henry Tay's account of their conversation.

51 Other evidence given for Tat Seng was also implausible. Ms Siew had said that Tat Seng unloaded the Heidelberg 4C onto pallets, covered it with canvass, and secured it with shrink-wrap. Tat Seng, however, did not charge for the storage of the Heidelberg 4C at its yard, nor the labour and costs incurred in securing and protecting the machine. Tat Seng had quoted a sum of $3,500 to simply move the machines from one location to another within Singapore and wanted that amount

paid in cash. It had not provided for storage costs within that quotation and it was not probable that a mere transporter would provide storage and protection services for free. This was also inconsistent with the treatment of the folding machine. Ms Siew had confirmed that that machine had been stored at Tat Seng's premises in Eunos and had continued to be stored at Tat Seng's new warehouse (after Tat Seng shifted) on the instructions of Kenzone who had paid Tat Seng's storage charges for the folding machine.

52 Additionally, Tat Seng had allegedly deployed a lorry-crane and some men to help load the Heidelberg 4C onto the buyer's trailers on 4 September 2006. Yet Tat Seng had not charged for these services either. A mere transporter would not provide such services for free.

53 Kenzone's own charging practices were equally suspect. When Hock Cheong allegedly refused to accept the Heidelberg 4C, Mark Yap said that he made frantic efforts to arrange for alternative storage for the machine. He did so even though Kenzone's job was merely to transport the machine from RGPL's premises to Hock Cheong's warehouse. Further, Kenzone did not charge RGPL anything at all for the transportation for the Heidelberg 4C nor the time and effort allegedly spent by Mark Yap to arrange for its safe storage.

54 The defendants' story about the redelivery of the Heidelberg 4C could not stand up to scrutiny either. The only witnesses who allegedly saw the handing over of the Heidelberg 4C were Mark Yap and Crispian Tan. In Mark Yap's case, in fact, he met Crispian Tan at the Kallang Distripark on the evening of 4 September 2006 to collect Tat Seng's payment but he did not stay to see the machine leave the Distripark. It was only Crispian Tan who saw the Heidelberg 4C being moved out of Tat Seng's yard. None of Tat Seng's workers who allegedly assisted in loading the machine onto the buyer's trailers were called as witnesses.

55 Additionally, the evidence given by Mark Yap and Crispian Tan as regard the handing over the Heidelberg 4C was inconsistent. Mark Yap asserted that Ms Siew told him that the machine could be shifted out of the yard at 6pm on 4 September 2006 because at that time Tat Seng's workers would be able to assist in the loading of the machine. Crispian Tan, however, said that he only told Mark Yap that he required assistance to load the Heidelberg 4C onto the buyer's lorries *after* he met Mark Yap that evening at Kallang Distripark. Mark Yap had then arranged for Tat Seng's assistance. Further, according to Mark Yap, after Crispian Tan had inspected the Heidelberg 4C and paid him $3,500, Mark Yap instructed the "Tat Seng people" who were already there to hand over the machine to Crispian Tan. Crispian Tan, on the other hand, denied that any of Tat Seng's workers were at the yard when he met Mark Yap. Quite apart from the lack of independent oral evidence on the handing over, there were no contemporaneous documents evidencing this. Kenzone did not issue any delivery order at all showing that RGPL had taken back the machine whilst Tat Seng's delivery order although allegedly issued on 4 September 2006 was not signed by Mark Yap until 20 October 2006.

56 Crispian Tan's evidence relating to the handing over of the Heidelberg 4C was suspect because:

(a) he alleged that he only found out that the yard belonged to Tat Seng when he went to take over the machine on 4 September 2006. It is not believable that Crispian Tan would have left a million dollar machine with Kenzone for four days without knowing where it was kept;

(b) he claimed that he did not know the vehicle numbers of the lorries that came to transport the Heidelberg 4C from the yard. It was not believable that he would not have kept a record of these numbers since, according to Crispian Tan, he had only been paid half the price of the machine at that time; and

(c) he claimed that he did not know the name of the Chinese gentleman who paid him the price of the machine and that claim was not believable when he had, by his own account, met this person on two occasions.

The defendants' response

57 The defendants responded that they had acted in good faith in carrying and storing the Heidelberg 4C and in the belief that RGPL was the true owner of the machine or at least had the authority of the true owner to give instructions regarding its removal. The machine was placed in RGPL's premises and was being used for the purpose of RGPL's business as the defendants were able to ascertain when their representatives visited the premises to survey the machine. It was therefore reasonable for the defendants to believe, as they did, that RGPL had actual control of the machine. Further, at all times, Kenzone was dealing with and taking instructions from Crispian Tan, the director running RGPL. Tat Seng as the sub-contractor of Kenzone was also indirectly taking instructions from Crispian Tan.

58 It was also apparent from the evidence that Kenzone had initially been instructed to help in the shifting of RGPL's office. It was only while this was being effected that Crispian Tan asked for assistance in the transporting of the Heidelberg 4C. Given that they knew that RGPL was shifting office, it was reasonable for the defendants to assume that the carriage and storage of the machines was also connected with the relocation of the office. The fact that Mark Yap and Kenzone were involved in the shifting of the office had been corroborated by the plaintiff's witness, Mr Chua, who had then been RGPL's production supervisor. Mr Chua had confirmed that he had shown Mark Yap all the material and furniture that had to be moved from Quek Industrial Building to the new premises in Bendemeer Road. Mr Chua had also accompanied Mark Yap on some of the shifting trips and insured that items moved from Quek Industrial Building were delivered to the new premises.

59 It was not unusual, as the plaintiff had submitted, for Mark Yap to give RGPL a verbal quotation for the office shifting job. Although Mr Heng had said that it was the third defendant's procedure to issue a written quotation, he had also testified that verbal quotations were an unfortunate reality of life given the exigencies of work, the need for fast service and the fact that Kenzone was not strong in the area of paper work. He said that when his operations people were out of their office, usually, out of laziness they did not give written quotations. Mark Yap had explained that he himself was often on the road so he sometimes gave written quotations and sometimes did not. In fact, he clarified that most of his quotations were given over the telephone.

60 On the issue of the admissibility of Kenzone's invoice for the office shifting work, the document was admissible in that Mark Yap had to be treated as the maker of the document. He gave the office the input on which the document was based and testified that he was the one who signed one copy after it was prepared. He said that he gave the signed copy to Crispian Tan and retained only an unsigned copy for Kenzone's file. That was why only the unsigned copy was produced in court. In any case, apart from the documentary evidence of the invoice, there was consistent oral evidence from Mr Heng, Mark Yap and Mr Chua about the office shifting job. The invoice could not be treated as a façade and it was the truth that Kenzone was engaged to help RGPL shift its office.

61 From the beginning, the conduct of the defendants had been forthcoming with full and frank disclosure. The defendants had never denied that they had been involved in transporting the Heidelberg 4C. The plaintiff's investigator Henry Tay had given evidence that Siew Kian Nam was most cooperative when he was interviewed. Siew Kian Nam had readily admitted to Henry Tay that Kenzone had transported the Heidelberg 4C. This showed that the defendants had no intention of concealing any fact relating to their dealings with the machine. Although their documentation was not very good,

they should not be unduly penalised for honest mistakes. The shortcomings in documentation had to be contrasted with their conduct in the proceedings. Kenzone itself was the first to volunteer information on its involvement with the Heidelberg 4C. It obtained a letter from Crispian Tan explaining that the transportation of the machine was based on RGPL's instructions. The defendants had also called Crispian Tan as a witness so that the court would have a truthful account of the facts surrounding the machine.

62 Crispian Tan had testified that the machine was sold to Mr Mani, the Malaysian buyer, and that Malaysian trailers had picked it up for transportation to Malaysia. No evidence had been led to prove that either of the defendants had any lorry or trailer registered in Malaysia and were capable of providing transportation to Malaysia. There was no evidence, therefore, that either of the defendants was involved in disposing of the Heidelberg 4C in Malaysia and it was not necessary for them to be involved in this as any such disposal could easily have been arranged by RGPL or the Malaysian buyer with a Malaysian transport company.

63 In proving that Kenzone or Tat Seng had disposed of the machine, the plaintiff would have to show that the defendants had actual or constructive knowledge of Crispian Tan's intention to dispose of it but the plaintiff had failed to establish this case. The defendants had handed the machine back to RGPL in the person of Crispian Tan and there was no change of ownership of the machine but merely a change in its physical location.

64 Although Crispian Tan had initially made a mistake as to when he had asked for assistance in moving the Heidelberg 4C, in court he had corrected himself by confirming that he did not have a buyer when he first contacted Mr Heng for the office shifting job. At that stage, he said he was undecided as to what he should do and his initial intention was to carry on with the printing business and keep the Heidelberg 4C. Therefore, he had obtained a lease of new premises from JTC. At the time when he was first in contact with Mr Heng regarding the shifting of his office, Crispian Tan knew that the Heidelberg 4C was too big to be taken into the new premises through the front door and that a wider entry way would have to be hacked in the wall to allow it entry. JTC, however, had not approved the hacking of the wall then. Nor had Crispian Tan found an alternative location in which to store the machine. Therefore, Crispian Tan could not possibly have asked Kenzone to move the Heidelberg 4C on 21 August 2006.

65 No aspersion could be cast on Crispian Tan's evidence in respect of the fact that he did not testify as to the payment he made to Kenzone for the office shifting job and the late invoice for the same. This silence arose because Crispian Tan was asked to give evidence focusing on the transportation of the machine and his evidence demonstrated that he had made a clean breast of what had happened. In any event, he had said in court that he had paid the bill for the office shifting.

66 As for Kenzone's invoice, Mark Yap had to be regarded as the maker of that document as he provided the information on which it was based. He also said he signed the invoice (albeit no signed copy was produced in court). The actual processor of the document could not be regarded as its maker as she had no personal knowledge of its contents and produced the document on Mark Yap's instructions. Thus the invoice was authentic, not a façade, and Kenzone had genuinely been involved in the removal of RGPL's office.

67 Regarding the lack of a delivery order for the Heidelberg 4C, Kenzone argued that this had been provided by Tat Seng who issued a delivery order in which Kenzone was listed as the customer. Likewise, there were no Kenzone delivery orders for the other items that Kenzone had transported for RGPL. Thus there was nothing usual about Kenzone not rendering a delivery order for the Heidelberg 4C.

68 As far as Tat Seng was concerned, the paucity of documentation was not unusual either. First, a verbal quotation for the transport of the machine was not unusual in the transport business as all that the job required was to pick up the goods and deliver them to order. The insistence on cash terms was not unusual either because this was Tat Seng's practice and it was dealing with Kenzone and RGPL for the first time. Tat Seng had no knowledge of Kenzone's annual turnover or its background.

69 As for the fact that Tat Seng had allowed the Heidelberg 4C to be handed back to Crispian Tan prior to payment, that was not an illogical thing to do. In the normal case, the recipient makes payment when he collects the goods. In this case, Tat Seng had agreed to the release of the Heidelberg 4C because it knew it still had physical possession of the folding machine which was worth thousands of dollars. Moreover, Mark Yap had given his word that he would make payment on the day that the machine was handed back to Crispian Tan.

70 Regarding Tat Seng's delivery orders, valid explanations had been given for the discrepancies. Ms Then had explained that the serial numbers did not run because the two delivery orders were produced from different books of pre- printed forms. The way in which the delivery orders had come to be signed only on 20 October 2006 had been explained by both Ms Siew and Mark Yap whose accounts were consistent with each other.

71 There was no evidence as to the time when Henry Tay called Tat Seng. Nor was there any evidence that he had identified himself as a private investigator. On the contrary, Ms Siew's evidence was that he had posed as a customer. There was no undue haste in the return of the delivery orders and the plaintiff had not been able to establish any sinister motive for the events on 20 October 2006 concerning these documents.

72 At all times, the defendants' actions in relation to the Heidelberg 4C had been ministerial. From the time of Crispian Tan's initial instructions to the actual shifting of the machine on 31 August 2006 to the front of Hock Cheong's premises and thereafter to the placing of the machine in Tat Seng's yard, all the acts of the defendants were based on Crispian Tan's orders and approval. Mark Yap put the machine in the yard without knowing its value. There was an urgent need to find storage space for the Heidelberg 4C and this was the only practical solution the defendants had. It was Crispian Tan who decided to go ahead to store the machine at Tat Seng's yard. Although the yard was not fenced, it was contained within the walled compound of Kallang Distripark. There were security personnel stationed at the gates of the park and they patrolled the compound regularly. Thus, this was a safe place to store the machine. Additionally, since it weighed eight to ten tonnes, only special heavy duty cranes could lift it up. Lorry cranes could not do the job and therefore there was little likelihood of the machine being stolen although it was in an unfenced yard. It was not practical to keep the machine on Tat Seng's lorries for a few days as Tat Seng needed its lorries for other jobs. In view of the emergency caused by Colin Lim's rejection of the machine, the decision to place it in the storage yard was the most reasonable and practical one. Tat Seng also took care that the machine would not be damaged by placing it on the pallets rather than directly on the earth and covering it with canvas secured by shrink-wrap.

Analysis

73 I start the analysis with the finding that Crispian Tan was not a witness of truth and his evidence cannot therefore be accepted at face value. In my judgment in suit 739 ([2008] SGHC 211), I found that Crispian Tan was not a forthright and truthful witness. That finding is equally applicable here. Crispian Tan had acted dishonestly in connection with all three machines including the Heidelberg 4C. By his own admission, he was a thief. While admitting he had stolen the machines from

the plaintiff, he was not remorseful enough to disclose fully whom he had dealt with in this regard and who had helped him. He only identified Mr Mani, a person who was out of the jurisdiction and the reach of the court. In his evidence, it was clear that he had been untruthful on several occasions. Particular examples of this are given in the following paragraphs.

74 First, in these proceedings, Crispian Tan maintained that when he initially approached Kenzone in early August, it was only to help him to shift RGPL's office and it was not until 26 August 2006 that he asked Kenzone to arrange for the transport of the two machines to Hock Cheong's premises. However, on 20 November 2006, at a time when he was aware the plaintiff was investigating the disappearance of the machines, Crispian Tan wrote to Kenzone to confirm that on 21 August 2006, RGPL had given it verbal instructions to:

(a) deliver pallets of paper material from Quek Industrial Building to the Bendemeer premises;

(b) deliver pallets of film to the Bendemeer premises; and

(c) request Kenzone to arrange with Tat Seng to deliver a printing machine to Tat Seng's premises.

The contrast between the two versions was stark. In court, Crispian Tan said that he had made a mistake in his letter of 26 November 2006, that its content were not true and the correct version was that which he was telling the court. It should be noted, however, that even in relation to the court version there were contradictions in the course of the proceedings as pointed out by the plaintiff (see [41] above). In the light of all these conflicting versions, it is impossible to tell where the truth lies or even that it has been told at all.

75 Second, it was not possible for me to believe Crispian Tan's assertion (and Colin Lim's confirmation of the same) that he had told Colin Lim that he only needed space for a few pallets' worth of machinery. The Heidelberg 4C was an enormous machine and even Mark Yap who had no experience of printing machines at all could realise its immense dimensions (at least 30 feet long and 6 feet high and weighing in total about 28 tonnes). It is stretching the bounds of credibility for Crispian Tan to explain that because he was not a technical man, he could have made such an egregious mistake as to its dimensions.

76 Third, why was it that Crispian Tan did not want to admit having asked Kenzone to arrange for the transport of the Heidelberg 4C in early August 2006? He must have known then that the machine had to be taken out of Quek Industrial Building. He had promised to give up those premises by 31 August 2006 and, if as he maintained, he had no buyer for the Heidelberg 4C when he first made his plans to shift the office, he must have known that he had to shift that machine along with all the other office equipment and furniture. In fact, he would also have known by then that it was not possible to shift the Heidelberg 4C directly from Quek Industrial Building directly to the new premises at Bendemeer Road because the JTC's offer of a tenancy at those premises made it clear that the new tenancy would take effect only on 10 September 2006. Further, to get the machine into those new premises required enlarging the entry way and such work required the prior approval of JTC. Crispian Tan did not produce any evidence that he had applied for such approval or that it had been granted or that work on enlarging the entry way had started and could be completed by end August 2006. Thus, he must also have known that he needed a place in which to store the Heidelberg 4C until it could be taken to the new premises. It is, therefore, not credible that he would only have asked Kenzone to shift the office equipment and not the Heidelberg 4C when he first contacted Kenzone. The most probable reason for his lie was that he wanted to portray the whole transaction as a last minute transaction and thus assist the defendants in putting forward a picture of mere

transporters trying their best to help their customer out of an unexpected fix.

77 Since I do not accept that Crispian Tan gave Colin Lim the impression that the Heidelberg 4C would only occupy a few pallets' worth of space in Hock Cheong's warehouse, I must also hold that it was not the size of the machine that caused Hock Cheong to refuse to take it into storage when Tat Seng's lorries arrived at its premises. What other reason could Hock Cheong have had for refusing to honour its commitment to RGPL especially in view of the fact that Colin Lim and Crispian Tan were well known to each other? The plaintiff's explanation was that when Colin Lim saw the machinery, he suspected that something was wrong and did not wish to be involved. I accept that explanation as being the probable reason for the rejection. Whilst Colin Lim might have been willing to come to court and lie about what Crispian Tan told him regarding the size of the machine, that was a less dangerous course than becoming involved in the disposal or concealment of the Heidelberg 4C.

78 In my judgment, the stories told by the defendants were not consistent or coherent especially when it came to the lack of proper documentation. As far as Kenzone was concerned, the only document purportedly issued was the invoice for the office shifting services. No signed copy of this invoice was produced. Neither was the maker of the document called. Although Mark Yap asserted that he was responsible for the information in the invoice and was the one who had signed it, he was not able to produce a signed copy and neither was Kenzone able to procure the signed copy from Crispian Tan to whom it said that document had been given. Further, the invoice was not accurate in its description of the work that had been done by Kenzone. This was odd since Mark Yap who was in charge of the removal had been the one who allegedly furnished the information for the invoice. Mark Yap had to acknowledge the inaccuracies in court but was not able to explain them. The copy invoice produced in court bears the word "PAID" on it. This looks as if it had been stamped onto the original of the document but Mark Yap asserted that it had been generated from the computer in that form. How the computer could have done that was not clearly explained. In my view, the authenticity of the invoice is in considerable doubt.

79 Further, Mark Yap's whole story of how he telephoned Crispian Tan and asked him to come down to Kenzone's office to pay the bill and Crispian Tan did so and, after the amount payable was worked out on the spot, paid him in cash, is dubious. Crispian Tan and RGPL were in deep financial problems. It was not likely that in October 2006, he would have been going around with thousands of dollars in cash in his pockets to pay Kenzone's bills immediately after receiving Kenzone's rather belated request for payment.

80 I am also troubled by the lack of documentation on the whole and inadequacies in Tat Seng's documentation. There was no written quotation for the job. There was no written confirmation of the acceptance of the quotation. There was no invoice for the job despite the fact that Tat Seng was required by law to issue a tax invoice since it is a GST-registered enterprise. Ms Siew was unable to give an acceptable explanation for the lack of an invoice. I do not accept the stories given by Mark Yap and Ms Siew, no matter how well they corroborate each other, which purport to explain how Tat Seng's delivery orders were only signed by Mark Yap on 20 October 2006. First, the delivery orders were not in running order so it is unlikely that they were both produced on the same day. I do not accept Ms Then's explanation for this. Tat Seng could have produced other delivery orders issued from the same two books on or around 4 September 2006 to show that the material invoices were issued from two separate books on that day. But it did not. Then the story that Mark Yap took the delivery orders back to his office to stamp them and forgot to return them until 20 October 2006 is not credible. It was admitted by Kenzone that these documents were important for its records. Ms Siew said that she kept the duplicate copies of the delivery orders on her desk. If that was so, she would have been constantly reminded to chase Mark Yap for the signed documents. Whilst she said that Kenzone had done so, Mark Yap denied this and said that it was he who had asked for

further copies of the delivery orders because his accounts department wanted to close the file.

81 The issue of payment for the transport of the Heidelberg 4C and the folding machine is another problem for the defendants. Kenzone made all sorts of arrangements and Mark Yap took, purportedly, a great deal of trouble to see that the Heidelberg 4C was properly transported and looked after. He spent at least five hours at RGPL's premises on 31 August 2006 attending to the loading up of the Heidelberg 4C and he later made urgent arrangements for the storage of the machine and its proper care while at Tat Seng's yard. Yet Kenzone did not charge a single cent for this exercise. All it charged for were the trips taken to deliver the office equipment and supplies. This is difficult to believe. Then when it came to Tat Seng, having quoted a fee of $3,500 (which it wanted to be paid in cash) in respect of one single journey from Quek Industrial Building to Hock Cheong's warehouse, Tat Seng did not charge for storing the machine in its yard, it did not charge for the pallets used to support it or the labour and materials used to protect it from the elements or the hours Tat Seng's men and equipment must have spent assisting in the loading of the Heidelberg 4C onto the buyer's trailers. This too is difficult to believe. In this context, it should be remembered that thereafter Tat Seng apparently kept the folding machine in its store (right up to the date of the trial) and charged $300 a month as storage charges which charges were paid by Kenzone.

82 Given that the defendants tried to paint a picture of their being mere transporters, it is odd that they did not notice anything peculiar about the way Crispian Tan took the Heidelberg 4C back. Although they had taken so much trouble to look after the machine for him, Crispian Tan did not employ them to deliver it to his new premises. Instead he took it over in the evening at the yard. The defendants did not complain about being deprived of the opportunity of making more money from this Heidelberg 4C. Instead, they happily helped in the loading of the machine onto someone else's trailers, and did so for free too. Considering that Tat Seng was asserting that this was the very first time it had ever done a job for Kenzone and that it had already bent over backwards to provide good service, it is hard to believe that it would have provided its labour and lorry crane for free when it was not getting the onward carriage contract.

83 The evidence of Henry Tay regarding his meeting with Siew Kian Nam was not rebutted by Tat Seng. The defendants' submissions on the point were speculative since Siew Kian Nam did not testify and Ms Siew's evidence on the meeting was entirely hearsay as she was not present. The account of events Siew Kian Nam gave Henry Tay was at variance in material aspects with Tat Seng's account to the court and immediately raises the query as to which was true. The fact that the interview took place on 20 October 2007 shortly after Tat Seng's delivery orders were faxed to and back from Kenzone (after weeks of inactivity on this front) certainly supports the plaintiff's submission that these documents were deliberately and hastily generated before the meeting. I agree it would be too much of a coincidence for Mark Yap to voluntarily ask for the documents on the very day on which it was useful for Tat Seng to have signed delivery orders to show to Henry Tay.

84 The plaintiffs submitted that as experienced companies in the logistics business, the defendants would have known that delivery orders evidencing the taking over and handing back of the goods to be transported would be issued in the normal course of business. They would also have known that written quotations and job confirmations and invoices/receipts (particularly when both the defendants are GST-registered companies) had to be issued. When none of these documents were issued, the defendants would have known something was amiss. Yet there is no evidence that, the delivery orders apart, either of the defendants asked the other for these documents or why the same had not been issued. There was no paper evidence that Kenzone and Tat Seng had been involved in or paid for the transport of the Heidelberg 4C. In these circumstances, I agree with the plaintiff that it is reasonable to infer that the defendants had acted dishonestly and they could not have reasonably believed that RGPL was entitled to deal with the Heidelberg 4C in the way that it did. The defendants

did not simply move the machine from an old factory unit occupied by RGPL to its new office. Even if their own story is to be believed, what they did was to take the machine from RGPL's factory to an open yard where it was concealed under canvas and shrink wrap and then hand it back to Crispian Tan to send wherever he pleased. That in itself was suspect since RGPL was supposed to be operating in new premises in Singapore and there was no obstacle to Tat Seng delivering the Heidelberg 4C there in due course together with the folding machine. That, too, was odd – the folding machine remained with Tat Seng for years thereafter.

85 Having considered all the evidence and the submissions, for the reasons given above, I am not satisfied that the defendants gave the court a full and frank account of how the Heidelberg 4C came into their hands, what they knew about Crispian Tan's intentions, and what they did with the machine thereafter. The defendants did not have convincing answers for most of the discrepancies in the evidence pointed out by the plaintiff. The defendants have not proved, on a balance of probabilities, that they acted *bona fide* in their dealings with the machine and were not aware that they were aiding RGPL in disposing of it. They admittedly had the machine in their possession and thereafter it was lost. They had the burden of showing that their actions were limited to changing the physical location of the machine and did not affect its ownership or interfere with the rights of the owner. They have not been able to discharge that burden.

86 In the event, I find Kenzone and Tat Seng liable to the plaintiff for conversion. On quantum, the plaintiffs adduced evidence from Chua Lian Seng, the Managing Director of Heidelberg Asia, which deals in Heidelberg machines, both new and second-hand machines. Chua Lian Seng's evidence, which I accept, was that the second-hand value of the Heidelberg 4C at the time of the conversion was in the region of $600,000 to $650,000. I hold that the plaintiff is entitled to damages of $600,000 as claimed.

Conclusion

87 In the event, there will be judgment for the plaintiff against the third and fourth defendants in the sum of $600,000 with interest thereon at the court rate from the date of the writ and costs.

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