IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1982] SGHC 23

Civil Suit 594/1979

Between

William & John (Pte) Ltd

… *Plaintiff*

And

Anglo Dutch Lighterage Co (1950) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Admiralty and Shipping — Bills of lading — Contracts of affreightment;
Admiralty and Shipping — Carriage of goods by sea

Version No 1: 11 Sep 2026 (01:05 hrs)

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William & John (Pte) Ltd v Anglo Dutch Lighterage Co (1950) Pte Ltd

[1982] SGHC 23

Civil Suit 594/1979
Chua F A J
11 August 1982

1 The plaintiffs are a trading company and the defendants are and were at all material times lighter owners, lighterage contractors, forwarding and distributing agents. The plaintiffs were the owners and/or consignees of four cases of gas lighters and one case of gas refills shipped on board the vessel Tobago for carriage from Le Havre to Singapore and which were loaded in Singapore into lighter No SC 7773 of the defendants for carriage from the vessel to the wharf for delivery to the plaintiffs.

2 The plaintiffs` claim against the defendants is for damages for breach of contract and/or breach of duty and/or negligence in and about the loading, handling, stowage, care, custody, carriage and discharge of the plaintiffs` five cases resulting in the damage of four cases of gas lighters and one case of gas refills.

3 The facts are these. On or about 26 July 1974, the five cases of gas lighters and gas refills were shipped on board the vessel Tobago under two bills of lading numbered 76 and 77 issued by Compagnie Maritime des Chargeurs Reunis (CMCR) the owners of the vessel. The shippers were a French firm in

Le Havre. The Tobago arrived in Singapore on 3 September 1974. The plaintiffs instructed Intermodular Transport Systems Div, a division of Cycle & Carriage Co (Industrial) Pte Ltd, to clear the cargo on their behalf. The plaintiffs` five cases were loaded on to the defendants` lighter No SC 7773 on 9 September 1974. The cargo being a dangerous cargo was discharged at the explosive anchorage at Telok Ayer and delivered to Intermodular Transport Systems Div on 13 September 1974, and the five cases were brought to No 13 Circular Road where the plaintiffs inspected the five cases. The plaintiffs noticed that the five cases were wet and some were broken. The plaintiffs then instructed Ritchie & Bisset to survey the goods.

4 The five cases were opened and the contents surveyed on 14 September 1974. Following the survey the surveyor submitted two reports exhs P1 and P2. The gas lighters had sustained various degrees of rustiness. A sample of the packing together with the rusty items were sent to a chemical laboratory which subsequently reported that sea water was the cause of the damage. Under bill of lading No 76, 124 pieces were short-delivered, 626 pieces were totally damaged and 845 pieces were delivered partially damaged. Under bill of lading No 77, 11 pieces were totally damaged and 19 pieces were partially damaged.

5 The case of the plaintiffs is that the defendants as bailees for reward failed to deliver the said cases of gas lighters and refills to the plaintiffs in the like order and condition as when they received them from the ship and accordingly the defendants were negligent, and/or in breach of their duty and/or contract and the plaintiffs are entitled to recover damages incurred to the extent of $18,223.17 that resulted from the defendants` negligence and breach.

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6 The defendants contend that they were the agents of the carriers that brought the five cases in question to Singapore and as such they cannot be held personally liable. They argue that as such agents they are entitled to the same rights and immunities available to the carriers, in particular the immunity from action when an action of this nature is commenced one year after discharge of the cargo.

7 The clause in the bill of lading on which the defendants are relying on is art XII which provides:

> *All limitations of liability and other provisions herein contained shall inure not only to the benefit of the carrier, his agents, vessel`s employees and other representatives but also to the benefit of any independent contractor performing services to the goods.*

8 The burden is on the defendants to establish that they were the servants, agents or independent contractors of the carriers.

9 Optorg Co Pte Ltd were at the material time the agents for CMCR, the owners of the Tobago. Gulam Ghouse (DW2), the freight manager with Optorg, said in evidence that when the `Tobago` came to Singapore he instructed the defendants to collect the five cases from the vessel at the roads. He said that Optorg engaged the defendants on the general instruction of CMCR to engage lighterage whenever necessary on behalf of their principals; that those instructions were not in writing and that they were developed over the years during their relationship. He contends that the bills of lading Nos 76 and 77 were liner terms bills of lading and as such the carriers were responsible to deliver the cargo to the consignees without additional charges. He says that it was the carrier`s responsibility in this case to deliver the five cases to the

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consignees without any additional charges and that the lighterage fees would be payable by the carriers and that Optorg made payment for the lighterage.

10 The evidence of Gulam Ghouse is not supported by the documentary evidence before me. In a letter dated 9 September 1975, to the plaintiffs` solicitors (AB34) Optorg said:

> *We would advise that the consignment was discharged on to M/s Anglo-Dutch Lighterage Co (1950) Pte Ltd lighter on 9 September 1974 copy of the discharging record is attached for your reference.*

11 Please note that all charges incurred for lighterage were paid by the consignee concerned.

12 And in Optorg`s letter of 1 April 1976, to the plaintiffs` solicitors (AB36) they said:

> *We do not have a copy of the lighterage contractors` receipt as the said lighterage company was engaged by the consignee concerned.*

13 Gulam Ghouse said that he overlooked to check those two letters and that those statements were not correct. It is most unlikely that such important letters relating to potential claims against them could be written by clerks without being checked and it is inconceivable that this was an error which could have gone unnoticed for several years and no attempts were made to clarify the situation despite repeated queries from the plaintiffs until the date of the trial.

14 Article II of the bill of lading clearly states that such expenses are to be borne by the consignees. Gulam Ghouse says that art II does not apply as the bill of lading is in liner terms and that CMCR provides only liner services. I am not satisfied that the bill of lading is in liner terms.

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15 There is no evidence that the defendants were paid by Optorg. I find that it was the consignees who paid the defendants in accordance with art II of the bill of lading.

16 The defendants have failed to establish that they were the servants, agents or independent contractors of the carrier CMCR.

17 Even if the defendants were agents or independent contractors of the carriers, the defendants cannot rely on the terms of the bill of lading as none of the four factual prerequisites laid down by Lord Reid in ***Midland Silicones Ltd v Scruttons Ltd*** [1962] AC 446;[1961] 2 Lloyd`s Rep 365 are met in this case.

18 Lord Reid in his judgment said (p 374):

> *I can see a possibility of success of the agency argument if (first) the bill of lading makes it clear that the stevedore is intended to be protected by the provisions in it which limit liability, (secondly) the bill of lading makes it clear that the carrier, in addition to contracting for these provisions on his own behalf, is also contracting as agent for the stevedore that these provisions should apply to the stevedore, (thirdly) the carrier has authority from the stevedore to do that, or perhaps later ratification by the stevedore would suffice, and (fourthly) that any difficulties about consideration moving from the stevedore were overcome. And then to affect the consignee it would be necessary to show that the provisions of the Bills of Lading Act 1855 apply.*

19 The next question at issue is whether the loss and damage to the goods arose out of the defendants` negligence.

20 The fact that the goods were discharged into the defendants` lighter is not in dispute. I find on the evidence that the goods were discharged from the ship into the lighter in apparent good order and condition. I also find that when the goods were discharged from the lighter they were not in the same order and

condition but were short-delivered and damaged to the extent specified in the Survey Reports of Messrs Ritchie & Bisset (exhs P1 and P2). There is no doubt that the loss and damage occurred during the five days that the goods were in the defendants` lighter.

21 The onus is on the defendants to show that the loss or damage did not happen in consequence of their neglect to use such care and diligence as a prudent or careful man would exercise in relation to his own property. This the defendants have failed to do.

22 The plaintiffs have established their case and are entitled to succeed in this case for the full amount. There will be judgment for the plaintiffs in the sum of $18,223.17 and costs. ***Claim allowed.***

Chua F A J

Vivien Ang (Godwin & Co) for the plaintiffs
Ajaib Hari Dass (Low & Pnrs) for the defendants