

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[1985] SGHC 24**

DA 12/1985

Between

Panachand & Co (Pte) Ltd

*... Appellant*

And

Riko International Pte Ltd

*... Respondent*

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**GROUND OF DECISION**

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Contract — Discharge

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**Panachand & Co (Pte) Ltd v Riko International Pte Ltd**

**[1985] SGHC 24**

DA 12/1985

L P Thean J

30 August 1985

1 This is an appeal against the judgment of the learned district judge given on 12 March 1985 in which he dismissed the plaintiffs' claim against the defendants with costs. At the conclusion of the hearing of the appeal, I allowed the appeal; set aside the judgment of the learned district judge; gave judgment for the plaintiffs in the sum of \$7,505.70 and awarded costs against the defendants here and below. I also made a consequential order for repayment to the plaintiffs or their solicitors of the deposit paid into court as security for costs of the defendants.

2 The facts insofar as they are relevant are these. On or about 13 January 1981 the defendants sold to the plaintiffs 534 bags of Cummin seeds for a total sum of \$75,051.60 (the first transaction). PW1, a director of the plaintiffs, who concluded the purchase, claimed that he had negotiated from the defendants a discount of 10% of the purchase price, and accordingly the plaintiffs paid to the defendants only a sum of \$67,545.90, leaving a balance of \$7,505.70, which according to PW1 represented the discount agreed upon. The defendants appeared to have accepted the sum of \$67,545.90 in payment of the Cummin seeds sold; at any rate there was no demand by them for the balance sum at or

about that time or any time thereafter. More than one year later, on 30 January 1982 an associate company of the plaintiffs, Exim Agencies Pte Ltd (Exim) agreed in writing to sell to the defendants 188 bags of Turkish gallnuts for a total sum of \$53,942.40 (the second transaction) and the contract for such sale was negotiated and concluded by PW1, who is also a director of Exim, through the agency of a broker, PW2. The invoice or bill dated 11 February 1982 for the sale, however, was by mistake made out in the name of the plaintiffs as the vendor. When this mistake was later discovered, PW1 attempted to rectify it but was informed by the broker that the defendants considered it not necessary as the defendants would be paying the bill to and in the name of the plaintiffs. The defendants then issued to the plaintiffs a cheque for the sum of \$46,438.70 post dated to 27 February 1982 which was met on due date, thus leaving a balance sum of \$7,505.70 unpaid. A receipt for the sum of \$46,438.70 was issued by and in the name of the plaintiffs to the defendants.

3        Thereafter, correspondence passed between the respective solicitors for the plaintiffs and the defendants relating to the claim by the plaintiffs for the amount of \$7,505.70. The defendants took the stand that the contract in respect of the second transaction was made with the plaintiffs who, so they alleged, were indebted to them in an equivalent amount as the balance of the purchase price for the Cummin seeds sold to the plaintiffs in January 1981 and hence no amount was due or owing to the plaintiffs. Initially, the solicitors for the plaintiffs, who are also solicitors for Exim, maintained that the contract in respect of the second transaction was made between Exim and the defendants. However, at a later stage they accepted the position that the contract was made between the plaintiffs and the defendants, and on behalf of the plaintiffs they demanded from the defendants payment of the amount of \$7,505.70; see pp 67-69 of the Record of Appeal.

4 Subsequently as no payment was made, action for recovery of the amount was instituted by the plaintiffs in the district court, claiming for the amount as the balance of the purchase price for the Turkish gallnuts sold by the plaintiffs to the defendants in the second transaction. The defence, consistent with the stand taken by defendants previously, was that no such amount was due or owing to the plaintiffs as the amount had been set off by an equivalent amount owed by the plaintiffs to the defendants as balance of the purchase price for the Cummin seeds sold in the first transaction. At the hearing of the action before the learned district judge, the following were agreed between the parties, namely:

(a) there was only one issue before the court: whether there was a set-off against the amount claimed by the plaintiffs, and

(b) the contracting parties to the second transaction were the plaintiffs and the defendants.

5 At the close of the case for the plaintiffs, counsel for the defendants elected not to call any evidence and submitted that the plaintiffs had not established their case. He argued (so it appeared from the Record) that the contract for the second transaction was made between Exim and the defendants. The learned district judge held that the contract was made between Exim and the defendants and the plaintiffs were not 'a party privy to this contract', and there was no evidence of any novation of the contract. He said:

*In the circumstances, I am therefore unable to find that the contract between EXIM and the defendant company had been novated. To my mind, what had been pleaded by the defendants - that of set-off, was clearly on the basis that the plaintiffs were Panachand & Company Pte Ltd and the defence cannot be estopped from raising the issue on the proper party to sue.*

6 In my judgment, the learned district judge with respect erred in law. First, the parties were bound by their pleadings and by their agreement expressly

made in court. In the defence, the defendants pleaded that the sum of \$7,505.70 claimed by the plaintiffs as the purchase price of the goods sold and delivered in the second transaction was not due, as it had been set off by an equivalent amount owed by the plaintiffs to the defendants, as the balance of the purchase price of the goods sold in the first transaction. The defendants therefore by necessary implication conceded that (i) there was a contract for the sale by the plaintiffs to the defendants of the Turkish gallnuts in the second transaction and (ii) the balance of the purchase price amounting to \$7,505.70 had not been paid but had been set off by an equivalent amount due from the plaintiffs to the defendants arising from the first transaction. In other words, the defendants accepted that the plaintiffs were a party to the contract in the second transaction. Secondly, before the learned district judge, counsel for the plaintiffs and the defendants accepted that the parties to the contract were the plaintiffs and the defendants and that the only issue before the court was whether there was a set-off by an equivalent amount alleged to be due from the plaintiffs to the defendants.

7 In view of the pleadings and the agreement reached, the only issue to be enquired and decided upon is whether there was an equivalent amount due from the plaintiffs to the defendants which the latter purported to set off. That issue the court must decide. Parties are bound by their pleadings and by the agreement or admissions made in court; the court cannot decide on issues not raised in the pleadings: see *Kiaw Aik Hang Ltd v Tan Tien Choy* [1964] MLJ 99 . In the circumstances it is not open to counsel for the defendants to resile from what he had agreed, ie that the plaintiffs and the defendants were the contracting parties, and argue (as he appeared to have done) that it was Exim, and not the plaintiffs, who had sold the Turkish gallnuts to the defendants in the second transaction.

8 I find myself also in disagreement with the learned district judge on his finding that there was no novation of the contract in the second transaction. On the facts before the court it was established that initially the contract was made between Exim and the defendants. Subsequently, the invoice or bill in respect of the sale was issued in the name of the plaintiffs by mistake. Nevertheless, the defendants accepted the plaintiffs as the contracting party, and PW1's attempt to correct the error was not successful and he did not pursue the matter further. It should be noted that in this connection PW1 acted as a director of Exim and also of the plaintiffs; and he it was who negotiated and concluded the two transactions with the defendants. Subsequent to the issue of the invoice or bill the defendants paid to the plaintiffs to account the sum of \$46,430.70 and the receipt therefor was issued by the plaintiffs: see pp 65 and 66 of the Record. Plainly the parties, namely: Exim, the plaintiffs and the defendants, must be taken to have agreed that the contract was to be treated as having been made between the plaintiffs and the defendants; there was a novation of the contract and the parties intended that the contract was between the plaintiffs and the defendants. Just before the action commenced the solicitors for the plaintiffs who were also solicitors for Exim elected by their letter of 6 August 1983 to accept the plaintiffs as the contracting party who sold the Turkish gallnuts to the defendants. Consistent with this stand, the action for recovery of the amount unpaid was initiated by the plaintiffs and consistent with this stand also, the defendants by their defence pleaded only set-off as a defence; there was no other defence.

9 On the basis of the pleadings and the agreement reached between the parties in Court, the burden of establishing the set-off rested squarely with defendants. The defendants had the right to begin and should have exercised the right. But that they did not do. Further, the defendants by their counsel elected

at the close of the case for the plaintiffs not to call any evidence to show the amount alleged to be due from the plaintiffs to the defendants arising from the first transaction. There was no evidence of any such amount so due and accordingly, the defendants had failed to discharge the burden. In the circumstances judgment should be given to the plaintiffs and I have so ordered.

10 In conclusion, I should add that I do not consider it fair to the plaintiffs to order a new trial of this action before another district judge. The defendants had every opportunity of establishing their defence of set-off before the learned district judge, assuming that they had the evidence in support; they failed to do so. I see no reason why they should be given a second chance.

11 ***Appeal allowed***

L P Thean J

Bryan Manaf Ghows (Khattar Wong & Partners) for the  
plaintiffs/appellants  
Bala Chandran s/o Kandiah (Mallal & Namazie) for the  
defendants/respondents

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