IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1988] SGCA 9

CA 58/1986

Between

Middle East Shipyard Pte Ltd

… *Appellant*

And

Sin Chin Seng Shipbuilding Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Costs

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

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Middle East Shipyard Pte Ltd v Sin Chin Seng Shipbuilding Pte Ltd

[1988] SGCA 9

CA 58/1986
Lai Kew Chai J; L P Thean J; Wee Chong Jin CJ
06 October 1988

1 Cur Adv Vult

2 This appeal arises from an order made by TS Sinnathuray J in respect of the appellants`/second defendants` notice under summons for directions and the respondents/plaintiffs` notice under summons for directions ordering, inter alia, that:

> (a) the respondents` claim and the appellants` counterclaim be dismissed with no order as to costs;
>
> (b) the bank guarantee furnished by the respondents in the sum of $2,000,000 be returned to the respondents for cancellation.

3 The appellants` appeal is only against that part of the order relating to the return of the bank guarantee to the respondents for cancellation.

4 The learned judge made the above order on the ground that the bank guarantee was given as security for the appellants` counterclaim which they may have had and which in the event had been dismissed.

5 The facts which are not in dispute are as follows. By a contract in writing dated 24 December 1976 made between the respondents and the appellants, the appellants agreed to build 40 dumb barges and 20 self-propelled barges for the respondents for eventual use in Burma. They duly delivered 36 dumb barges and two self- propelled barges. However, they did not deliver the remaining 4 dumb barges and 18 self-propelled barges.

6 On 5 April 1978, the respondents commenced 22 separate actions, one in respect of each barge and arrested all 22 vessels. The relief claimed by the respondents in each of these actions were as follows:

> (a) a declaration that they were the sole owners of the barge; alternatively, they were entitled to have possession of the said barge decreed to them;
>
> (b) damages for breach of contract dated 24 December 1976;
>
> (c) an injunction to restrain the appellants from detaining the said barge or withholding possession thereof from the respondents; additionally or alternatively an injunction to restrain the appellants from removing out of the jurisdiction or disposing of in any way, or mortgaging the said barge.

7 On 20 October 1978, on the respondents` application the learned Chief Justice, ordered, inter alia, that the, appellants deliver possession of the barge `SAN 007` to the respondents upon the respondents providing security to the satisfaction of the registrar in a sum to be assessed by the registrar. Similar orders were made with regard to the barges in the other suits.

8 On 27 November 1978, the parties appeared before an assistant registrar for assessment of the security. This amount was assessed at $2m. The appellants, being dissatisfied with the amount, appealed. The appeal was dismissed by the learned Chief Justice on 12 December 1978 and the dismissal was affirmed by the Court of Appeal.

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9 The sole issue in this appeal turns on the purpose for which the security was ordered.

10 This issue must be decided by looking at the circumstances giving rise to the order of court dated 20 October 1978. At that time, the appellants merely had a possessory lien in respect of the 22 vessels in their possession. In the appellants` appeal against the assessment of the security, the Court of Appeal found that:

> *... the security was ordered under the inherent jurisdiction of the court. If the court orders a possessory lien holder to relinquish possession, the order will include protection for any rights he may prove to have.*

11 On this view, the security was ordered purely as a measure of protection to safeguard the rights of the appellants and not as compensation for the loss of these rights. These rights, if any, must pertain to the appellants` counterclaim filed on 25 November 1978. Therefore, it must follow that the security will lapse with the dismissal of the counterclaim as the appellants would no longer be in a position to prove their claim.

12 In our judgment, the furnishing of the security does not obviate the appellants from discharging the burden of proving their rights at the trial of their counterclaim. The security can only be realized if the appellants can prove the actual amounts owing to them. This point was conceded by Tan Soo Kuan, a director of the appellants, in an affidavit filed in on 28 November 1978. He said:

> *Whatever security the plaintiffs provide will not go to the appellants as of right as they would necessarily have to prove the amount actually due to them before they can claim the security. But if the security is less than the sums recovered under the judgment, they will not be able to re-claim, as it were, for numerous reasons.*

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13 In this regard, the language of the guarantee furnished as security by the respondents is also significant. Paragraph 4 of the letter of guarantee reads:

> *Now we, Standard Chartered Bank, ... in consideration of the court ordering possession of all the said twenty-two barges to the plaintiffs do hereby guarantee payment in respect of* ***any judgment or order*** *in the above-mentioned suits or any of them ... (Emphasis added.)*

14 The guarantee is expressed to be made in respect of any judgment or order obtained by the appellants. As their counterclaim has been dismissed, it must necessarily follow that the guarantee ceases to be enforceable in the hands of the appellants.

15 Finally, we come to the appellants` argument that the order of the learned Chief Justice was merely an interlocutory injunction.

16 On this basis, counsel for the appellants has cited numerous authorities to show that such an injunction would be ipso facto discharged by the dismissal of the respondents` action. It would follow from this argument that the parties ought then to be restored to the status quo and the respondents, being now unable to return the barges, should be ordered to give up the security in lieu of the barges.

17 We are of the opinion that there is no merit in the appellants` argument. In their motion taken out on 14 October 1978, the respondents sought the following orders:

> (1) that the appellants be restrained from detaining the barge `SAN 007` or withholding possession thereof from the respondents;

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> (2) that the appellants be restrained from removing out of the jurisdiction or disposing of it in any way or mortgaging the barge `SAN 007`.

18 On 20 October 1978, the learned Chief Justice made the following order:

> *Interim injunction in terms of prayer 2 of motion, on usual undertaking, to continue until defendants deliver possession of vessel to plaintiffs in terms of prayer 1 of motion to be read as follows:*

19 That the second defendants do deliver possession of the vessel to the plaintiffs upon the plaintiffs providing security to satisfaction of registrar in a sum to be assessed by the registrar and upon the plaintiffs giving the usual undertaking as to damages.

20 In ***Spry on Equitable Remedies*** (3rd Ed), an interlocutory injunction is defined as an injunction that is directed to ensure that particular defined acts do not take place or continue to take place pending the final determination by the court of the rights of the parties. Accordingly, it issues in a form that requires that, in the absence of a subsequent order to the contrary, it should continue up to but not beyond the final hearing of the proceedings.

21 The appellants have never challenged the order for delivery of the barges. The act required to be done under the order is a one-off act. It is not a continuing act which can be ordered to last until trial. It would therefore be incorrect to say that such an order depends on the outcome of the trial. That being so, any loss caused by the making of such an order is left to be cured by the undertaking as to damages which the respondents were ordered to furnish.

22 Accordingly, the appeal must be dismissed with costs.

23 ***Appeal dismissed.***

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Lai Kew Chai J
L P Thean J
Wee Chong Jin CJ

Quek Mong Hua (Lee & Lee) for the appellants/defendants
Prem Kumar Gurbani (Prakash Gurbani & Chong) for the respondents/plaintiffs

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