

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1989] SGHC 7

Suit 1680/1985

Between

Chan Sew Nang

... Appellant

And

Sindo Pasir Pte Ltd

... Respondent

GROUND OF DECISION

Admiralty and Shipping — Carriage of goods by sea

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Chan Sew Nang v Sindo Pasir Pte Ltd

[1989] SGHC 7

Suit 1680/1985
Punch Coomaraswamy J
23 January 1989

1 Cur Adv Vult

2 The plaintiffs claimed a sum of \$79,967.05 for freight charges for the carriage of goods for the defendants.

3 The plaintiffs applied for summary judgment under O 14 of the Rules of the Supreme Court 1970. This application was heard before the registrar who made the following orders:

(a) judgment be entered for the sum of \$39,167.05 and costs of \$700; and

(b) defendants be granted unconditional leave to defend this action for the balance of the claim with costs in the cause.

4 The plaintiffs have appealed against the order granting leave to defend the balance of the claim. The defendants have not appealed. The plaintiffs' appeal is allowed by me and judgment for the sum of \$40,800 with costs was entered. We are here concerned only with the order granting judgment for this balance sum.

5 The defendants' defence for the claim for \$40,800 can be found in paras 14, 15, 16 and 17 of the affidavit of Kok Chu Pa filed on 13 April 1985. They contended that a sum of \$40,800 for 'E 3 clearance' of the plaintiffs' vessels in Indonesia would be handed over to the plaintiffs to be given to CV Celcon Aneka. The plaintiffs have failed to forward this cash advance to CV Celcon Aneka. This would give rise to a counterclaim for this amount.

6 The defendants had also relied upon a breach by the plaintiffs in refusing to carry on with the work of transportation of the sand in their vessels. They contended that this was a wrongful repudiation on the part of the plaintiffs. This contention, however, is not supported by any documentation or other evidence adduced.

7 The plaintiffs in response have denied these allegations. They maintained that the vessels were withdrawn from the service of the defendants by reason of their default of payment of hire. The hire was due for payment within seven days of the presentation of invoices. The plaintiffs had referred to the exhibits 'KCP 16' and 'KCP 17' in the affidavit of Kok Chu Pa filed on 13 April 1985 on behalf of the defendants.

8 These exhibited letters were written by the defendants acknowledging that there was an outstanding amount of \$69,767.05 due to the plaintiffs. This sum is lesser than the claim of \$79,967.05 by \$10,200. The letters 'KCP 17' and 'KCP 18' had mentioned that the sum of \$10,200 had been paid to one 'Miss Tan' of the plaintiffs.

9 It is an established principle of law that as long as delivery of the goods shipped has been made, freight must be paid. There cannot be deducted from the freight any claim for damage to the goods. See ***Dakin v Oxley*** (1864) 10

LT 268. Liability for freight can be avoided only when the goods are delivered in such a condition that they are substantially and in a mercantile sense different from those shipped: see *Asfar v Blundell* [1896] 1 QB 123.

10 These cases limit the types of counterclaim or defences which may be available against claims for freight charges. From the affidavits filed by the defendants, no acceptable defence has been adduced.

11 A further affidavit was filed on 16 April 1986 by the plaintiffs after the notice of appeal was filed. There is exhibited as `CSN 1` to this affidavit an unqualified admission addressed to the plaintiffs signed by two directors of the defendants in the name of the defendants stating that \$79,967.05 (ie the full sum claimed in this action) was due to the plaintiffs. The defendants asked that confirmation of this be given to the defendants` auditors; this was done on 16 January 1986.

12 The defendants stated that the sum claimed to be due to the plaintiffs was reflected in the defendants` account as at 30 September 1985. The application for summary judgment was made on 8 March 1985 and the application was heard on 25 November 1985. This is an unqualified admission of debt by the defendants made even after summary judgment had been applied for. In spite of the appeal coming before me well after four weeks of the filing of the plaintiffs` affidavit on 16 April 1986, the defendants made no effort to qualify or explain away that admission.

13 For these reasons stated earlier and on the defendants` unqualified and unexplained admission, the appeal must be allowed with costs and judgment entered accordingly for the balance of the claim.

14 Appeal allowed.

Punch Coomaraswamy J

Chew Teck Lim (Shyam & Choo) for the appellants/plaintiffs
Fong Chee Yang (Cheng Fong & Tan) for the
respondents/defendants
