

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1990] SGHC 43

OS 832/1988

Between

Schindler Lifts (Singapore) Pte
Ltd

... Plaintiff

And

People's Park Chinatown
Development Pte Ltd (in
liquidation)

... Defendant

GROUND OF DECISION

Contract — Contractual terms — Express terms; Personal Property — Passing
of property

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**Schindler Lifts (Singapore) Pte Ltd v People's Park Chinatown
Development Pte Ltd (in liquidation)**

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OS 832/1988
Lai Kew Chai J
15 June 1990

1 Cur Adv Vult

2 The plaintiffs, who were sub-contractors, sought a declaration against the defendants, who were developers and a company in liquidation, that ten sets of escalators which had been installed but not commissioned belong to them. They also claimed in quasi-contract for the proceeds of sale of the said escalators which had been sold by the liquidators of the defendants. Alternatively, if their main claims were unsuccessful, they also asked for a declaration that the unfixed materials in relation to the installation of the ten escalators, namely, glass panels and the handrails brought to the site and meant to be fixed, were the property of the plaintiffs and for the consequential order that the defendants, having sold them, do pay over the proceeds to them. At the conclusion of the hearing I declared that the ten escalators, including the unfixed glass panels and the handrails, belonged to the plaintiffs. I ordered that the defendants account and pay over to the plaintiffs the proceeds of the sale of these goods with interest. I awarded costs against the defendants.

3 The plaintiffs submitted that the property in the escalators or, alternatively, the said unfixed materials, not having been completely installed and commissioned, and not having been paid for by the defendants, still remained with the plaintiffs and that the defendants had sold them without their authority. They contended that as between them and the defendants and as a matter of contract and by implication, they had the right to enter upon the site, unfix the escalators and retake possession of them. They abandoned their claim for damages for conversion and they also withdrew before me the proof of debt, which had included claims for the said escalators and the unfixed materials, and which they had filed with the liquidator of the defendants who had neither accepted nor rejected the proof of debt. In defence, the defendants submitted that the said escalators, in view of the material factors which were not really in dispute, had become fixtures and had become part of the land belonging to the defendants and, accordingly, such escalators had become the property of the defendants by operation of law. The defendants also disputed the plaintiffs' contention that the plaintiffs had the right in contract to unfix and retake possession of the escalators.

4 I now turn to the undisputed material facts. In May 1982, the plaintiffs submitted a tender to the defendants for the installation of lifts and escalators for a proposed hotel with ancillary shopping/cinema on URA land parcel 199 at the junction of New Bridge Road and Upper Cross Street (hereinafter referred to as the project). The defendants were the developers. By a letter dated 29 November 1982, the defendants' architects on behalf of the defendants accepted the plaintiffs' tender. The plaintiffs were required to sign a 'nominated sub-contract' with the main contractors, Sanpete Builders (S) Pte Ltd (the main contractors). The said letter of the defendants' architects stated, inter alia, as follows: 'In accepting your offer, we wish to confirm that you shall sign a

nominated sub-contract with the main contractor who will be appointed in due course...`. The letter went on to say that `the sub-contract documents are in the course of preparation and will be ready for signature after the appointment of the main contractor`.

5 By a letter dated 13 January 1983, it was also agreed between the plaintiffs and the defendants, inter alia, that payment of the plaintiffs` claims would be deferred for a period of 12 months from the date of the claim, irrespective of the date of certification, and that such payment would be made directly by the defendants to the plaintiffs upon the expiry of the deferred payment period. It was also an agreed term that that letter would form an integral part of the sub-contract documents. The plaintiffs laid great stress on the contents of this letter to found their submission that, in consequence, there is privity of contract between the plaintiffs and the defendants and that this agreement for deferred payment by the defendants plainly indicated that as between them property in the escalators did not pass from the plaintiffs to the defendants until full payment had been made to and received by the plaintiffs.

6 On or about 6 December 1984, the plaintiffs signed the sub-contract with the main contractors. It was provided that the conditions of the sub-contract were supplemental to the main contract dated 22 May 1984 and entered into between the defendants and the main contractors.

7 I should now set out the relevant provisions in the sub-contract and in the main contract and it has to be borne in mind that the parties thereto are respectively the plaintiffs and the main contractor and the main contractor and the defendants. By the sub-contract, the plaintiffs agreed with the main contractor to install and complete the installation of the lifts and escalators in

accordance with the specifications and drawings and as stipulated in the defendants' architects' letter of 29 November 1982 at the contract value stated to be \$5.68m. By cl 2 of the sub-contract they agreed to execute and complete the sub-contract works to the reasonable satisfaction of the main contractor and of the defendants' architects. As is usual in such cases, they also agreed by cl 3(a) of the sub-contract to observe and perform those terms and conditions in the main contract which relate to the sub-contract works and to indemnify the main contractor for any liability arising in respect of the sub-contract works.

8 So far as the testing of the escalators was concerned, the obligation of the main contractor to the defendants under the main contract was set out in art 78 of the Additions to the Conditions of Contract. By virtue of cl 3(a) of the sub-contract, this obligation to test the escalators was passed on to the plaintiffs.

9 There is no express provision in the sub-contract on the question of the passing of property to be used in the sub-contract works. It is relevant to set out cl 14 of the main contract. It reads as follows:

Unfixed materials and goods intended for, delivered to, and placed on or adjacent to the works shall not be removed except for use upon the works unless the architect has consented in writing to such removal which consent shall not be unreasonably withheld. Where the value of any materials or goods has in accordance with cl 30(2) of these conditions been included in any interim certificate under which the contractor has received payment, such materials and goods shall become the property of the employer, but subject to cl 20(B) or 20(C) of these conditions (if applicable), the contractor shall remain responsible for loss or damage to the same.

10 I should note that under the main contract it was agreed that the main contractor shall remain responsible for loss or damage of the materials and goods within cl 14 and that cll 20(B) and 20(C), which were only applicable

where the employer/defendants had agreed to bear such loss and damage, were accordingly deleted from the conditions of the main contract.

11 By July 1986, the plaintiffs had delivered six lifts and 17 escalators to the site. The 17 escalators represented the full complement required under the sub-contract. The six lifts were for use in the `podium` block. Eight `tower-block` lifts were not supplied because the project was abandoned before their due date of delivery. Ten of the escalators had been installed and such installation involved hoisting them into specially constructed spaces where they rested on their own weight. It was common ground that these escalators were in no way affixed or attached to the land or any building. Before each escalator was hoisted into place, the area on which it was to rest, ie the sill, was prepared for it. Such preparation required all uneven edges, blobs of cement, etc to be flattened so that an even surface was obtained. Rubber metal pads, which absorbed vibrations, were then laid on the concrete. No screws, bolts or other means of attachment were used to hold down the rubber metal pads. On top of these pads were placed the escalators. They were all installed in their respective positions in the building awaiting commissioning. The escalators were specifically designed and manufactured for the building in question and vice versa the relevant parts of the building had been constructed to fit the specifications of the escalators which were moving staircases intended to remain permanently as a means of more effectually enjoying the use of the premises.

12 On 23 April 1986, a winding-up petition was presented against the defendants and on 29 August 1986 a winding-up order was made against them. Shortly thereafter the main contractor terminated the main contract and that automatically determined the employment of the plaintiffs under the sub-

contract. By a letter dated 20 March 1987 to the defendants' liquidator, the plaintiffs stated that they were willing to reduce their claims against the defendants by \$1,480,590 if they were allowed to retake and repossess all 17 escalators. On 27 July 1987, the liquidator claimed that the plaintiffs were unsecured creditors and declined the plaintiffs' offer. In September 1987, the plaintiffs learned that the project and the development had been sold. In November 1987, the plaintiffs through their solicitors wrote to the defendants' liquidator that as they expected the project to proceed under the new developer they had no interest to repossess the escalators. They had entertained the hope, which turned out to be in vain, that they could contract with the new developer to use the Schindler lifts and escalators on the site.

13 In early 1988 the plaintiffs were surprised to learn that the defendants' liquidator had sold ten escalators to another party. They remonstrated with the defendants' liquidator who later asserted that a quantity surveyor had advised that the ten escalators had become fixtures and that the seven other escalators which were not installed had been removed by them and stored in an undisclosed site. In the event, the plaintiffs commenced action against the main contractor for the return of the seven escalators which they recovered.

14 On 19 December 1986, the plaintiffs filed their proof of debt. The claim was for the sum of \$2,617,496.60 made up of (a) certified progress claims of \$1,979,539; (b) interest on the certified progress claims of \$135,197.10; (c) retention on material delivered to site but not installed of \$268,513.50; and (d) cancellation costs for the tower block lifts of \$234,255. The worth of the ten escalators amounted to \$762,339 of the first item and \$61,811 of the third item reflected the value of the unfixed glass panels and handrails of the escalators. The defendants' liquidator informed the plaintiffs that the question of admission

or rejection of the plaintiffs' proof of debt was held over pending an investigation of the plaintiffs' claims.

15 On 5 January 1989, the main contractor was wound up by the High Court as a result of a debt of \$4.1m incurred in connection with the project with which the plaintiffs and the defendants were concerned.

16 On 25 August 1988 the plaintiffs filed this originating summons which was heard before me on 16 and 18 May 1989 at the conclusion of which I made the declarations and the orders I mentioned earlier in this judgment. I ordered the defendants to pay over the proceeds of the goods in lieu of damages for conversion in accordance with what was decided in *Lamine v Dorrell* (1851) 92 ER 303. That case laid down the proposition that where a man takes goods to which he has no right and sells them, the owner may waive the tort of conversion, and recover the price for which they were sold in an indebitatus assumpsit for money had and received.

17 In my judgment it was the clear intention of the plaintiffs and the defendants that property in the goods shall not pass to the defendants except upon payment after the issue of the interim certificates. There was, therefore, an implied term in the contract between them that the plaintiffs were conferred the right to enter upon the site, unfix the escalators and retake possession of them. *Hobson v Gorringe* [1897] 1 Ch 182 decided that a chattel upon becoming a fixture in law would pass as part of the freehold to a mortgagee and that even if a licence to remove the chattel could be implied from the mortgagee leaving the mortgagor in possession, the entry of the mortgagee into possession would determine such a licence. That proposition of law governed the rights of the owner of the chattel which had become fixtures and a third party owner of the

legal estate such as a mortgagee or bona fide purchaser without notice. In my view, the nature of the plaintiffs' rights to the goods was the same as that of Hobson in **Hobson v Gorringe** where at p 192 AL Smith LJ said:

It seems to us that the true view of the hiring and purchase agreement, coupled with the annexation of the engine to the soil which took place in this case, is that the engine became a fixture - ie part of the soil - when it was annexed to the soil by screws and bolts, subject as between Hobson and King to this, that Hobson had the right by contract to unfix it and take possession of it if King failed to pay him the stipulated monthly instalments. In our opinion, the engine became a fixture, ie part of the soil - subject to the right of Hobson which was given him by contract. But this right was not an easement created by deed, nor was it conferred by a covenant running with land. The right, therefore, to remove the fixture imposed no legal obligation on any grantee from King of the land. Neither could the right be enforced in equity against any purchaser of the land without notice of the right, and the defendant Gorringe is such a purchaser.

18 These principles were applied in **Gebrueder Buehler AG v Peter Chi Man Kwong & Ors** [1988] 2 MLJ 69 .

19 The intention of the parties as to the passing of property in goods had to be implied in the absence of any express provision in the contract. It had to be noted that this was not a contract for the sale and purchase of goods but a contract to make up materials and fix them. By the nature of the latter type of contract, property in any goods would not pass until they have been fixed: see **Tripp v Armitage** (1839) 150 ER 1597 at p 1602 per Lord Abinger; **Bellamy v Davey** [1891] 3 Ch 540; and **Dawber Williamson Roofing v Humberside County Council** (1979) 14 Build LR 70 applied the principle in **Tripp v Armitage** .

20 In this case the contract was to supply and install the escalators. They were never commissioned nor tested to the satisfaction of the main contractor

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and the architects. Accordingly, the property in the escalators never passed to the defendants.

21 ***Claim allowed.***

Lai Kew Chai J

Jimmy Yim (Drew & Napier) for the plaintiffs
Jude Benny (Joseph Tan Jude Benny & Co) for the defendants
