IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1991] SGCA 18

CIVIL APPEAL NO 55 OF 1990

Between

GROUNDS OF DECISION

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

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GRAMAC CONSTRUCTION & TRADING PTE LTD v ZUST-AMBROSETTI (S.E.A.) PTE LTD

[1991] SGCA 18

CIVIL APPEAL NO 55 OF 1990
Yong Pung How CJ; Goh Joon Seng J; Lai Kew Chai J
03 July 1991

1 **Judgment:**

2 CORAM: Yong Pung How C.J. Lai Kew Chai J. Goh Joon Seng J.

3 < Delivered by Goh Joon Seng J)

4 **GROUNDS OF DECISION**

5 This appeal is against the decision of the learned Judicial Commissioner upholding the decision of the Assistant Registrar granting final judgment against the Appellants on an Order 14 application by the Respondents in the sum of Italian lire 60,948,129/- with interest and costs.

6 The appeal came before us on the 22nd April 1991. We allowed the appeal by giving the Appellants conditional leave to defend subject to payment by them into court the amount claimed or a banker's guarantee to be furnished within 30 days with costs in the cause.

7 We now give our reasons for doing so.

8 The Appellants are a company incorporated in Singapore and its principal activities are in construction. At the material time they were engaged in the construction of a MRT station under MRT Contract 402 for the Mass Rapid Transit Corporation of Singapore.

9 The Respondents are a subsidiary of an Italian company Zust Ambrosetti SPA ('Italian Zust'). Both the Respondents and Italian Zust are freight forwarders.

10 For use in the construction of the Station, the Appellants purchased a consignment of granite from Serio & C SPA of Carrara, Italy ('Serio'). For payment to Serio for this consignment of granite, a letter of credit No 5156 was established in favour of Serio for the account of the Appellants.

11 The granite was eventually shipped on board the s.s. Ming Universe under a House Bill of Lading No 3489014 issued by Italian Zust as forwarding agents with the Appellants being the party to notify. The s.s. Ming Universe arrived in Singapore in September 1988. By telex from one L L Wang of the Appellants to one Alfred Wong of the Respondents, the Appellants confirmed as follows:

12 "Attn: Mr Alfred Wong Zust Ambrosetti Fm: Gramac Constrn N Trdg

13 Subj: L/C 5156

14 We confirm our instructions to truck two containers shipped by s.s. Ming Universe under B/L No 3489014 to MRT 402 Khitab Station.

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15 Please inform us of T Time prior to delivery. Thanks.

16 Regards LL Wang"

17 In compliance with this instruction the granite was duly delivered by the Respondents to Khatib Station (wrongly referred to as 'Khitab Station' in the said telex). On the 27th September 1988, the Appellants having unstuffed the containers, requested the Respondents to take away the two empty containers. On the 6th October 1988, the Respondents invoiced the Appellants for the freight trucking and other related charges totalling $5,987.70. This was duly paid by the Appellants.

18 In delivering the granite to the Appellants, the Respondents did so as freight forwarders of the goods under the said House Bill of Lading. The delivery was not made against presentation by the Appellants of the original House Bill of Lading duly endorsed as required of the Respondents. Consequently Serio did not receive payment from the Appellants for the granite delivered to them. Serio therefore looked to Italian Zust for reimbursement of their loss in the sum of Italian lire 60,948,129. Italian Zust in turn looked to the Respondents for payment. The Respondents duly remitted the sum of US$42,000/- being the equivalent of Italian lire 60,984,129 plus bank charges making a total of US$42,052.25.

19 The Respondent then claimed reimbursement for their loss from the Appellants alleging that the delivery of the granite to the Appellants was made on the Appellants' "promise and or undertaking to deliver the original House Bill of Lading upon delivery" of the granite to them by the Respondents.

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20 It is on the issue of this "promise and or undertaking" that the whole claim hinges. On the affidavits filed it is not clear who on behalf of the Appellants made the promise or gave the undertaking to deliver up the original House Bill of Lading. It is also not clear when and how such promise or undertaking, if any, was given. For this reason the matter should go for trial. But in view of the telex from L L Wang to Alfred Wong and due receipt of the granite and payment of the freight and trucking charges by the Appellants, the leave to defend should be conditional subject to the Appellants paying into court or furnishing a banker's guarantee in the amount claimed.

Yong Pung How CJ
Goh Joon Seng J
Lai Kew Chai J

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