

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 76

Originating Summons No 1188 of 1990

Between

Sembawang Shipyard Ltd

... Plaintiff

And

Ban Choon Shipping Pte Ltd

... Defendant

And

Seawise Glory Pte Ltd

... Third Party

GROUND OF DECISION

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**Sembawang Shipyard Ltd v Ban Choon Shipping Pte Ltd
(Seawise Glory Pte Ltd, Third Party)**

[1991] SGHC 76

Originating Summons No 1188 of 1990
G P Selvam JC
04 June 1991

1 Judgment:

2 Coram: Mr. G.P. Selvam, JC JUDGMENT By a written Agreement made between the Plaintiffs and the Defendants in July 1989, the Plaintiffs sold their Floating Dock No. 2 ("the Floating Dock") to the Defendants for the sum of US\$440,000.00. The Agreement referred to the Defendants as the Contractor.

3 Clause 8 of the Agreement provided as follows :

4 "The contractor shall cut the Floating Dock in Thailand and sell it as a ferrous

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6 scrap. The contractor shall show evidence with photographs that the Floating Dock has been scrapped. the contractor shall inform the company when cutting of the Floating Dock commences and allow the company all reasonable opportunity to witness the same."

7 By a letter dated 15th August 1989 to the Plaintiffs, the Defendants informed the Plaintiffs that they had in turn sold the Floating Dock to Seawise Glory Pte Ltd. The Agreement between the Defendants and Seawise Glory Pte Ltd contained a provision similar to Clause 8.

8 The Plaintiffs by a letter dated 6 October 1989 requested the Defendants for evidence of the scrapping of the Floating Dock. The Defendants failed to provide it. On 15 November 1989 the Plaintiffs again requested the Defendants for the evidence. The Plaintiffs were then informed that the said Floating Dock was in Thailand and had not been scrapped since the scrap price was low.

9 In March 1990 and June 1990 the Plaintiffs repeated their demand that the Defendants comply with Clause 8. There was no compliance.

10 In July 1990 the Plaintiffs were informed that the Defendants were having difficulty in getting evidence of scrapping of the Floating Dock. The Defendants asked for and were granted additional time to comply with Clause 8. The Defendants again failed to perform their obligations and persisted in their failure even though they have had more than adequate time for it. The Floating Dock is physically situate in Thailand.

11 The Plaintiffs then took out this Originating Summons seeking specific performance of Clause 8 of the contract. In the alternative they seek damages for breach of contract.

12 The premise on which the above reliefs were sought is that the Floating Dock was sold at a low price for its scrap value and not as a floating dock to be used as such. The prevailing market price for it as a Floating Dock was much higher. If the Defendants or others deriving title from them were permitted to

use it as a floating dock it would pose a competition to the Plaintiffs' ship repair business. In the result the Plaintiffs would suffer the double jeopardy of selling it at a loss and losing part of their ship-repair business.

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14 The Defendants' only answer to the Plaintiffs' claim is that they had sold the Floating Dock subject to the same provision as Clause 8. The responsibility passed on to the buyers and solely rested on them.

15 In the judgment of this Court the Defendants have no valid defence to the Plaintiffs' claim.

16 At law and in equity contractual obligations cannot be assigned or transferred to a third party without the consent of the party who has the benefit of the contract. If there is consent to a third party assuming the obligation there will be a novation. The novation will substitute the new party and discharges the original party to the contract. It gives birth to privity between the original beneficiary and the new party. Consent of the original party which can be express or implied, is the essence of novation. Without it the original party who was burdened with the obligation continues to be responsible.

17 The obligation accepted by the Defendants under Clause 8 of the contract was personal to them. They could not unilaterally divest themselves of it. The purported passing of their obligation to Seawise Glory Pte Ltd could not in law relieve them of their responsibility to the Plaintiffs.

18 The Defendants could of course enter into a contract with a third party securing their services to perform their obligation. The Plaintiffs, however,

would be strangers to that contract. Such contract cannot be a defence to the Plaintiffs' claim against the Defendants: *Res inter alios acta alteri nocere non debet*.

19 The law is succinctly stated by Lord Green M.R. in *Davies v Collins* < 1945 > 1 All E.R. 247 at 249 :

20 "In many contracts all that is stipulated for is that the work shall be done and the actual hand to do it need not be that of the contracting party himself; the other party will be bound to accept performance carried out by somebody else. The contracting party, of course, is the only party who remains liable. He cannot assign his liability to a sub-contractor, but his liability in those cases is to see that the work is done, and if it is not properly done he is liable. It is quite a mistake to regard that as an assignment of the contract; it is not."

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22 By reason of the foregoing there will be judgment for the Plaintiffs against the Defendants for specific performance of Clause 8 of the contract to be effected within 2 months failing which there will be judgment for damages to be assessed by the Registrar.

23 The Defendants shall pay the costs of the action and assessment of damages should that become necessary.

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Third Party)* [1991] SGHC 76

G P Selvam JC

Latiff for the plaintiffs
T Chelliah for the defendants
Tay Bee Hoon for the third party
