IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 111

DC Suit 622/1991

Between

Corten Furniture Pte Ltd

… *Plaintiff*

And

Merzario (Singapore) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Corten Furniture Pte Ltd v Merzario (Singapore) Pte Ltd

[1992] SGHC 111

DC Suit 622/1991
Chan Sek Keong J
30 April 1992

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 This was an appeal against the decision of the Deputy Registrar of the Subordinate Courts giving interlocutory judgment to the plaintiffs on their claim for damages against the defendants for breach of contract arising out of the carriage by sea of the plaintiffs' goods from Genoa, Italy to Singapore. The goods were office furniture. They were shipped in a container on board a vessel which was not owned by the defendants. When the container was opened in Singapore on delivery to the plaintiffs, the goods were found in such a damaged condition as became a total loss.

4 The plaintiffs claimed damages in the amount of $37,288.37 and interest. The defendants did not deny any of these facts. Their defence before the Deputy Registrar and before me was that they acted as freight forwarders and not as carriers and therefore not liable for the damage to the goods which occurred during the voyage.

5 In my view, this defence was based on a confusion between the function of a freight forwarder and the legal duties of a freight forwarder.The contract between the plaintiffs and the defendants was for the forwarding of the goods from Genoa to Singapore. It was for warehouse to warehouse delivery. The goods were delivered into the custody of the defendants in Genoa in good condition. The defendants then arranged to ship the goods to Singapore on board the vessel "MING PROGRESS" which belonged to Yangming Marine Transport Corporation. A bill of lading was issued to another company in the defendants' group of companies as consignors and the defendants as consignees. The party to be notified was not the plaintiffs but the defendants.

6 The defendants did not transmit a copy of this bill of lading to the plaintiffs. Nor did they inform the plaintiffs that they were shipping the goods in their own name and not in the name of the defendant. For the voyage, the defendants paid to the carriers' agents freight in the amount of $18,796.00 for nine containers. There was no evidence on the amount paid in respect of the container containing the plaintiffs' goods. However, they sent a bill to the plaintiffs charging $2741.20 for freight and $25.00 as agency fee.

7 On these facts, the defendants maintained that they were acting as agents of the plaintiffs. This plea was misplaced.The defendants had never informed the plaintiffs as to their role in the shipment of the goods: instead, they issued their own bill of lading to the plaintiffs. The plaintiffs were aware that the defendants were freight forwarders but it did not follow from this that they were contracting with them as agents in forwarding the goods. The bill of lading issued by master of the vessel showed that one of the defendants' sister companies acted as principal vis-a-vis the carriers.

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8 The "in house" bill of lading issued to the plaintiffs was issued in the name of MERZARIO as Carrier. The expression "carrier" was defined therein as "the company within the Merzario Group which owns or has on charter (either totally or by way of sub-charter) the ocean vessel and on whose behalf this Bill of Lading has been issued." This bill of lading would give to an ordinary person the impression that a member of the Merzario Group was the carrier on whose behalf the bill of lading was issued. The issue of this bill was another indication that the defendants had intended to act as principals in forwarding the goods from Genoa to Singapore.

9 The functional difference between a freight forwarder and a carrier is clear. One makes the arrangement for the carriage of the goods and the other carries the goods. However, this does not mean that because of his function, a freight forwarder is always acting in the capacity of an agent of the owner of the goods or of the carrier, as the case may be. The legal relationship between a freight forwarder and customer depends on the terms and conditions on which he undertakes to forward the goods. He can do so as principal and he can do so as an agent.

10 On the facts of this case, it was clear that the defendants contracted with the plaintiffs as principals. The plaintiffs left it entirely to the defendants to ship the goods to Singapore. They contracted with the defendants and no one else. The defendants did not inform them that they were merely acting as agents. The defendants charged the plaintiffs directly for the freight; they did not merely ask for reimbursement of the freight paid by them to the carriers. This was consistent with the defendants having sub-contracted the carriage to the carriers.

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11 Furthermore, in issuing their own bill of lading, the defendants intended to act as principals. I quote below a passage from Hill on the Law of Freight Forwarder at page 40:

12 Where a forwarder issues a bill of lading in his own name, he cannot claim to be acting merely as an agent on behalf of his client in effecting transit. As Bankes L.J. explained < TROY v THE EASTERN COMPANY OF WAREHOUSES (1921) 8 Ll.L.Rep.17 at p.19 > ,

13 ".... this is not a case of principal and agent at all. It is a case of two independent contracting parties, one of whom described themselves as forwarding agents, but although in certain circumstances and/or occasions they might act as mere agents, in this case they did not act or purport to act as mere agents, carrying out their principal's instructions ... and by issuing a through bill of landing they made manifest the fact in reference to this particular transaction that they were an independent contracting party."

14 For the above reasons, I held that the defendants were principals and were liable to the plaintiffs under the freight forwarding contract. The appeal was dismissed with costs.

Chan Sek Keong J

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Sarah Liew (Abraham Low & Partners) for the defendants/appellants
Arivanantham s/o Krishnan (Manjit & Partners) for the plaintiffs/respondents

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