IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 158

Suit 658/1991

Between

Hygeian Medical Supplies Pte Ltd

… *Plaintiff*

And

Tri-Star Rotary Screen Engraving Works Pte Ltd

… *Defendant*

And

Seng Wing Engineering Works Pte Ltd

… *Third Party*

GROUNDS OF DECISION

Tort — Negligence — Damages; Tort — Negligence — Duty of care; Tort — Nuisance — Essential factors; Tort

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

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Hygeian Medical Supplies Pte Ltd v Tri-Star Rotary Screen Engraving Works Pte Ltd (Seng Wing Engineering Works Pte Ltd, Third Party)

[1993] SGHC 158

Suit 658/1991
Kan Ting Chiu JC
10 July 1993

1 Cur Adv Vult

2 A dislodged water hose connection in an industrial building caused a flood which led to these proceedings.

3 The defendant occupied unit #07-10, Block 20B, Henderson Industrial Park, in which it was setting up rotary screen engraving equipment. The equipment included a cooling system in the form of a water chiller. The chiller was supplied with water through a flexible hose. The far end of the hose was attached to a water point fitted with a stopcock and a smooth copper pipe. The end of the hose was attached to the copper pipe and secured by a ring clip.

4 Sometime during the night of 15 June and the morning of 16 June 1990, the hose slipped off the pipe. Water escaped and flooded the defendant`s premises and the adjoining units on the same floor, including the plaintiff`s store, where medical supplies were kept. The medical supplies were damaged by the water, and the plaintiff sought damages from the defendant.

5 The plaintiff`s claim against the defendant was founded on three causes of action - negligence, nuisance, and the principle in ***Rylands v Fletcher.*** (The third cause of action was not specifically pleaded, but the defendant did not object, and replied to the plaintiff`s submissions thereon.)

6 The defendant in its defence denied the flooding of the plaintiff`s premises, and asserted that it had engaged the third party, a competent independent contractor, to fit the connection. The defendant also brought the third party into the proceedings.

7 The area of work undertaken by the third party was relevant in resolving the issues between the parties. The third party was engaged to install the air pipes, gas pipes and exhaust pipes for the equipment (notes of evidence p 31C), and while doing that, it was asked to connect the flexible hose to a water point. In their statement of claim against the third party the defendant did not plead that the third party supplied or installed the copper pipe. In its defence, the third party alleged that the defendant had installed a smooth pipe when it should have installed a threaded or jagged pipe. It was common ground that the water point and stopcock were fitted by another contractor who installed the water pipes, and the copper pipe was added later.

8 The defendant`s managing director, Mr Shih Hing Wong, said that the copper pipe was supplied by the third party (notes of evidence pp 31F-32A). The third party`s site supervisor, Mr Khoo Min Kee, denied that, but admitted that he gave instructions to the water pipe contractor regarding the copper pipe. He said: `I did tell the water pipe contractor how to put in pipe with the stopcock on. He said he will put the piping for me. I did not tell the defendant or the pipe contractor to change the smooth pipe to a jagged pipe.` (notes of evidence p

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57B-C). On this evidence, I find the third party to be responsible for the fitting of the copper pipe.

9 On the issue of negligence, the questions raised were (1) whether it was proper to attach the hose to a smooth pipe, (2) whether the stopcock should be closed during the night, and (3) whether the connection had been interfered with.

10 Mr Shih said that he relied on the third party to supply and connect the hose. He did not know whether it was connected to a smooth or threaded pipe because he did not examine the connection after it was installed.

11 The third party`s employee, Mr Neo Seng Kiat, who installed the connection said that after he inserted the hose onto the pipe and tightened the clip, he pulled it to see if it was tight, and it did not come off. The supervisor, Mr Khoo, also pulled the hose and found it to be securely fixed (notes of evidence pp 52F-53A).

12 During the hearing, it transpired that the third party did not do water piping (notes of evidence p 57E). Nevertheless, Mr Khoo considered himself to be competent to attach a hose to a water pipe (notes of evidence p 58B), and maintained that a smooth pipe can be used if a hose clip is applied and tightened with a screwdriver (notes of evidence p 58D).

13 The third party also called Mr Chow Ngai Mun, a mechanical engineer, as its witness. Mr Chow had carried out tests on a connection using the same types of flexible hose, smooth copper tube and clip used in the failed connection (TP 2 B 1-12 and TP B 1-2). His tests showed that at a water pressure of three bar (which he said was the pressure at the defendant`s premises), the connection

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leaked, but the hose did not slip, and it did not slip even when the pressure was increased to seven bar. Unfortunately, he did not say how long it took for the leak to develop, or how long the connection was tested before he stopped each test. He concluded that: `A connection of a hose to a smooth pipe with a clip is sufficient to withstand normal water pressure` and that `I am certain if the copper pipe and flexible hose are properly tightened, it could not slip off` (notes of evidence pp 63F and 64B). Mr Chow was asked about the leak and its effect. He agreed that on the night and in the morning of 15 and 16 June, the connection could have leaked, and the leak became progressively bigger before the hose slipped off. He also agreed that such a condition was not static or stable (notes of evidence pp 66F-67B).

14 Mr Loh Wan Sern, a surveyor, gave evidence on this issue on behalf of the defendant. He said that the copper pipe used was of soft copper which may deform or flatten if the clip is over-tightened (notes of evidence p 48E) and he was of the view that a serrated pipe should have been used. I placed no weight on his opinion because firstly, he had not conducted any tests to support his conclusion, secondly, he admitted to having no experience with water pressure, and thirdly, he did not state any basis which would qualify him to give any admissible opinion on the issue. I also disregarded the evidence of Mr Pang Soon Guan, another loss adjustor, because he did not see the original connection, did not conduct any tests, and was not qualified to give opinion evidence on the issue.

15 On the evidence, I find that the use of the smooth copper pipe and clip was inadequate. From Mr Chow`s tests, the connection will leak even if the clip is properly tightened. A leaking connection cannot be satisfactory by the fact of the leak itself and because a leak, if undetected and unchecked, could lead to

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the dislodging of the hose. It was submitted on behalf of the third party that as the hose did not become detached till 15 or 16 June although it was fixed in late May, the hose must have been properly fitted. I do not accept that as a necessary inference. Given the likelihood that the connection could leak and that the leak may result in the hose giving way, it is not self-evident that the connection was secure just because it held till 15 June. There must be facts or admissible opinion to support that assertion, but none was adduced.

16 I now turn to the stopcock. If it was closed the water supply would be cut off. It would be less likely for the hose to slip, and there would not be a flood even if it did. Counsel for the plaintiff and third party relied on the fact that the stopcock was not closed, but they did not lead any evidence to show that stopcocks should be closed when the water supply is not needed during the night. Mr Shih said that the water supply system to the water chiller was similar to that of the water cistern in a toilet, in that a ball float controls the water supply so that when the water reaches a certain level, the supply is cut off (notes of evidence p 43C to E), and he was not contradicted. I find that there is no duty to close the stopcock to the supply to the chiller inasmuch as one is not expected or required to close the stopcock to the supply of a toilet overnight.

17 It was not pleaded by the third party that the connection was interfered with, but counsel for the defendant did not object to the issue being raised at the trial.

18 The third party asserted that a new clip was used when the hose was attached. When Mr Chow examined the dismantled connection produced during the hearing, he found damage on the clip that could have been caused by a

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screwdriver and a spanner (notes of evidence p 64D) and it was submitted that this showed that the connection had been interfered with.

19 The difficulty with this contention was that there was no evidence when the connection was dismantled and replaced. Mr Shih could only say that it was done in the course of carrying out maintenance work on the water chiller (notes of evidence p 44A). The damage was as likely to have been caused when the connection was refitted after the flood or when it was eventually replaced, as to have been caused before the flood.

20 The third party`s supervisor, Mr Khoo, said that when he completed the job, there were other contractors at the site, whom he believed to be the partition and electrical contractors (notes of evidence pp 56F and 57A). When counsel for the third party raised the issue with Miss Ooi Kheng Bee, an employee of the defendant, she said that the other contractors had finished their work when the third party fitted the hose (notes of evidence pp 23C, 24E and 25E). Mr Shih also said that he was there when the connection was done, and there were no other contractors working at that time (notes of evidence pp 41A and 45C). The court was faced with conflicting bare assertions, when more specific evidence could have been adduced. For the defendant, it can be said that they had no notice that the third party would raise the issue, but the third party should have adduced more evidence in support of its assertion. In the circumstances, I find that there was no satisfactory evidence that other contractors were present, or that anyone had interfered with the connection.

21 On the basis of these findings of fact, I find that the defendant was negligent. The defendant owed a duty of care to ensure that the plumbing connections on its premises were secure and would not cause any flooding to its

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neighbours` premises. The defendant had delegated this duty to an independent contractor, the third party, a company that did gas piping but not water piping(notes of evidence p 57E) without ascertaining whether it was competent to do the job (notes of evidence p 62A). Although the defendant would be exonerated if it diligently appointed a competent independent contractor to do the work, the defendant was liable because it did not exercise reasonable care in appointing the third party -see ***Jolliffe v Willmett & Co & Anor*** . The defendant is therefore vicariously liable for any negligence of the third party.

22 On the third party`s part, they asked for the smooth copper pipe to be fitted by the water pipe contractor (notes of evidence p 57B) and had supplied the hose and clip. At some time, the connection must have leaked and then parted. The irresistible inference, after discounting interference, was that the use of the copper pipe and the single ring clip was inadequate to provide a secure connection. In the circumstances, I find the third party was negligent in the choice of the smooth pipe and in using a single ring clip to secure the hose to it. The third party must therefore indemnify the defendant against the plaintiff`s claim.

23 I then considered the claim founded on nuisance. When one party`s occupation or use of land results in injury to another party, the ingredients for liability in negligence and in nuisance are often the same. However, counsel for the defendant submitted that the single incident of flooding cannot constitute a nuisance, citing Thesiger J`s judgment in ***SCM (United Kingdom) Ltd v WJ Whittal & Son Ltd*** . In this case the defendant, who were building contractors, hammered a metal tube into a bottom of a trench and damaged an electrical cable, and caused a power failure to the plaintiff`s factory. The plaintiff took

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out an action against the defendant on negligence and nuisance. Thesiger J found the defendant liable in negligence but not in nuisance, saying:

> *Where there is no doubt that a single isolated escape may cause the damage that entitles a plaintiff to sue for nuisance, yet it must be proved that the nuisance arose from the condition of the defendant`s land or premises or property or activities thereon that constituted a nuisance. I am satisfied that one negligent act that causes physical damage to an electrical cable does not thereby constitute a nuisance.*

24 Thesiger J distinguished ***British Celanese Ltd v AH Hunt (Capacitors) Ltd.*** In this case, the defendant, manufacturers of electronic components, stored metal foil strips on their land. Wind blew some of the strips onto a power sub-station, causing a disruption of electric supply to the plaintiff`s factory. The defendant contended that the isolated happening was not enough to constitute a nuisance, and that there must be a continuing condition. Lawson J rejected that argument, saying:

> *Most nuisances do arise from a long continuing condition, and many isolated happenings do not constitute a nuisance. It is, however, clear from the authorities that an isolated happening by itself can create an actionable nuisance.*

25 These views can be reconciled by reference to the `state of affairs` element of nuisance - see ***Street on Torts*** (8th Ed) at pp 319-321, and ***Salmond & Heuston - The Law of Torts*** (12th Ed) at pp 59-60. Jenkins LJ said in ***Stone v Bolton*** :5 `The gist of ... nuisance is the causing or permitting of a state of affairs from which damage is likely to result` and in ***Spicer v Smee,*** Atkinson J said `... private nuisance arises out of a state of things on one man`s property whereby his neighbour`s property is exposed to danger`.

26 Where there is a potentially dangerous state of affairs on land, a single incident may set off the danger. When that happens, the occupant is liable, as

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the defendant in ***British Celanese*** , was for storing metal foil strips on its land. Damage may also result from an act which is not related to any state of affairs on the land, as it happened in ***SCM v Whittal*** , and in such a situation no liability in nuisance arises.

27 In the present case, the flooding was connected to the deficient hose connection - an existing state of affairs on the premises. For this reason, I find that the flooding constituted a nuisance.

28 However, the plaintiff`s claim under the principle in ***Rylands v Fletcher*** , fails. To succeed, the plaintiff must establish that there was a non-natural use of the defendant`s premises. As Lord Moulton had said in ***Rickards v Lothian:***

> *It is not every use to which land is put that brings into play that principle. It must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of land or such a use as is proper for the benefit of the community.*

29 In determining whether a specific user is an ordinary or natural use, one must consider the time and the type of land involved. As Lord Parker said in ***Read v J Lyons & Co Ltd*** , `all the circumstances of the time and place and practice of mankind must be taken into consideration so that what might be regarded as dangerous or non-natural may vary according to those circumstances`. Activities on land and buildings considered non-natural a generation ago may be common now, when there are land and buildings which are developed to cater for designated activities. In ***British Celanese*** , the defendants were carrying on business as manufacturers of electronic components in a trading estate. Lawson J dismissed the plaintiffs` claim on the principle in ***Rylands v Fletcher*** , saying:

> *The defendants are alleged to occupy premises on a trading estate. Such estates are planned and laid out for the purpose of*

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> *accommodating manufacturers. The defendants are manufacturers. It follows that they are using this site for the very purpose for which sites were made available on the estate. The use of the site for manufacturing would be an ordinary one; the use of the site for any other purpose would be unusual. Does the particular kind of manufacturing which is done in the defendant`s factory constitute, in Lord Moulton`s words `some special use bringing with it increased danger to others`? The manufacturing of electrical and electronic components in the year 1964, which is the material date, cannot be adjudged to be a special use nor can the bringing and storing on the premises of metal foil be a special use in itself.*

30 The defendant brought in water into its premises through a half-inch diameter pipe (notes of evidence p 34C). There was no evidence that the volume of water supplied or the use of the chiller was out of the ordinary. I am unable to say that the installation of a water chiller in an industrial building was a non-natural use in 1990.

31 The issue of damages was relatively straightforward. The damage to the plaintiff`s goods was surveyed by Mr Denny Sim from a company of loss adjusters. Mr Sim submitted reports of his survey and gave evidence at the hearing. He inspected water-affected cartons and cases at the plaintiff`s store and reviewed the plaintiff`s computation of the losses at $123,066. He found that goods to the value of $1,232.72 claimed to be damaged were not damaged. He also found errors in the prices amounting to $7,344 and that the whole claim was marked up by 10%. Accordingly, he reduced the claim to $103,040.35 - $2,108.27 for totally damaged goods and $100,938.28 for partially damaged goods. The claim for the partially damaged goods was settled for $60,599, or 60% of its value with the plaintiff keeping the goods. He said that the settlement at this figure was not excessive; from his experience in a normal case, the realization value is between 10% and 20%, and in this case it was agreed at

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40%.1 There was also a claim for salvage expenses of $1,120 which he accepted.

32 Mr Sim`s evidence on the loss was not seriously or effectively challenged, and no other figures were put forth by the defendant and the third party. In the circumstances, I allow the plaintiff`s claims of $2,108.27 for the totally damaged goods, $60,599 for the partially damaged goods and $1,120 for salvage expenses.

33 However, the plaintiff also made a claim of $3,664 for survey fees. There was nothing to show that it paid the fees. On the contrary, the invoices for the fees produced were not even issued to the plaintiff, but to two insurance companies (PB57 and PB58). I reject this item of the plaintiff`s claim.

34 In the circumstances, I enter judgment for the plaintiff against the defendant in the sum of $63,787.27 with interest at 6% pa from 2 April 1991 (the date of the writ) to the date of judgment and I order that the defendant pay the plaintiff two-thirds of the taxed costs, as the plaintiff has succeeded on two out of the three causes of action pleaded.

35 In the third party proceedings, I order the third party to indemnify the defendant against the damages, interest and costs that it has to pay to the plaintiff, and to pay the costs of the third party proceedings.

36 Order accordingly.

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Kan Ting Chiu JC

Brij Raj Rai (Rajah & Tann) for the plaintiff
Sara Liew (Abraham Low & Pnrs) for the defendant
Fazal Mohamed (B Rao & KS Rajah) for the third party

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