IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 64

S168/1987

Between

The Bank Of East Asia Limited

… *Plaintiff*

And

General Diesel Supplies (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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The Bank Of East Asia Limited v General Diesel Supplies (S) Pte Ltd

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Punch Coomaraswamy J
19 March 1993

1 **Judgment:**

2 Coram: Punch Coomaraswamy J

3 **GROUNDS OF DECISION**

4 The plaintiffs are bankers and one of their clients was Suntan Engineering Pte Ltd < "Suntan" > . In November 1984, Suntan was granted certain of the banking facilities by the plaintiffs on foreign letters of credit, local letters of credit and trust receipts. At the hearing before me, the plaintiffs did not adduce any evidence of the circumstances or purposes for which these facilities were given. In particular they did not adduce any evidence to show that Suntan were to utilise these facilities only for new and future transactions.

5 The defendants were suppliers of machinery and on 9 November 1983 Suntan and the defendants entered into a hire purchase agreement whereby the defendants let and Suntan hired one Fukushima DDW-275D winch < "the

winch" > . Under the hire purchase agreement, the hire purchase price of the winch was for S$400,000. The relevant clauses under that agreement were:-

6 3(b) On signing this agreement, the Hirer shall pay to the Owner an initial payment of $20,000.00 (which shall become the property of the Owner absolutely) in consideration of the option to purchase contained in Clause 12 hereof.

7 3(c) So long as the hiring shall continue, the Hirer shall pay without previous demand the monthly hire rentals in the amount and manner set out in item 9 Part B of the Schedule hereto. The Hirer's liability to pay the hire rentals shall continue notwithstanding any defects in the equipment or the breakdown, loss of or damage to the equipment.

8 12 If the Hirer (having meanwhile duly observed and performed all the terms and conditions of this agreement whether express or implied) shall pay to the Owner such sums under Clause 3(c) hereof as shall with the sum paid for the option to purchase amount in the aggregate to the hire purchase price and shall also pay all sums payable to the Owner under Clause 5 hereof, this agreement and the hiring thereby constituted shall determine and the Hirer shall become the absolute owner of the equipment but until such time the equipment shall remain the sole property of the Owner and the Hirer shall be a mere bailee thereof.

9 Pursuant to the agreement, the winch was delivered to Suntan at their shipyard premises in Jurong by the defendants on 12 November 1983. $200,000 was still to be paid under the hire purchase agreement as of 10 July 1985. It was only on payment of this sum that Suntan could exercise its option to purchase

the winch and acquire ownership of it. In order to pay this balance, Suntan applied to the plaintiffs for a letter of credit in favour of the defendants for $200,000. The defendants were required to tender for payment a delivery order acknowledging receipt of the goods "covering delivery of final payment of one unit Fukushima diesel driven winch to Singapore from the seller's godown on or before 30.7.85".

10 The plaintiffs requested Santan to amend the letter of credit to including the following:-

11 1. Delivery order in duplicate issued by the beneficiary to the order of the applicant and to be countersigned by the applicant's authorised signatory (signature to be verified by the bank) covering receipt of goods in good order and condition. 2. Seller's godown to buyer's godown. 3. Delete "final payment of".

12 In response to the plaintiffs' request, Suntan signed the application for amendment to the documentary letter of credit on 10 July 1985 whereupon the letter of credit was established by the plaintiffs.

13 This letter of credit set out the requirements for negotiation as appear in the application for amendment to documentary letter of credit and that documents are to be presented for negotiation within 16 days after the date of delivery order. The letter of credit became available to the defendants for negotiation against, inter alia, their delivery order to Santan and signed by Santan's authorised signatory (which the plaintiffs will verify) evidencing receipt of goods in good order and condition and covering delivery of the winch from seller's godown to buyer's godown in Singapore on or before 30 July 1985.

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14 In order to obtain payment of the balance monies due under the hire purchase agreement and pass title of the winch to Santan, the defendants on 12 July 1985 prepared a delivery order for the winch and obtained Santan's authorised signatory's signature thereon and negotiated the letter of credit. The delivery order is dated 12 July 1985, ie the date it was prepared. The delivery order and invoice was for $200,000. The delivery order did not set out the unit price for the winch nor did it state that the winch was physically delivered on 12 July 1985. The plaintiffs paid the defendants the sum due on the letter of credit. The defendants received the proceeds of the letter of credit in their bank account with The Chase Manhattan Bank NA on 18 July 1985.

15 On 12 August 1985 Santan signed a trust receipt in respect of the winch in favour of the plaintiffs. On 5 September 1985 Four Seas Communications Bank Ltd appointed Receivers and Managers over Santan pursuant to two debenture deeds. The plaintiffs informed the Receivers and Managers that by reason of the trust receipt they had a lien over the goods (ie the winch) until their indebtedness was paid in full.

16 On 23 December 1985 the Receivers and Managers wrote to the defendants stating that their investigations revealed that although Santan had paid the $200,000 under the letter of credit, the winch had not been delivered and required the plaintiffs to deliver the winch to the Receivers within seven days of the said letter.

17 The defendants replied to the Receivers on 7 January 1986 advising that the winch was covered under the hire purchase agreement dated 9 November 1983 and was actually delivered to Santan's yard in late 1983. They stated that

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the letter of credit was meant to cover the remaining balance of $200,000 overdue on the winch.

18 The Receivers and Managers also wrote to Tan Pong Tyea, a director of Santan on 18 November 1985. Tan Pong Tyea replied on 30 November 1985 stating that the letter of credit was for part payment of the winch serial No 40225 which was installed on a completed vessel.

19 In these circumstances, the plaintiffs commenced this action against the defendants for damages on the basis that the repesentations contained in the delivery order evidencing delivery of the winch on the date of the delivery order was false and untrue as no winch was delivered on the date of the delivery order to Santan. The claim was for damages for fraudulent misrepresentation contained in the delivery order.

20 In their defence, the defendants referred to the hire purchase agreement and to the physical delivery of the winch to Santan's yard in November 1983 pursuant to the hire purchase agreement. They averred that there was a balance of $200,000 owing and until payment is made, title in the goods did not pass to Santan. Santan arranged for payment of the balance by a letter of credit and in order to negotiate the letter of credit and obtain payment, a delivery order which evidenced delivery by the defendants and receipt by Santan of the winch was tendered. The delivery order and payment under the letter of credit gave constructive delivery of the winch to Santan as owners and vested title of the winch in Santan. This was as agreed between Santan and the defendants. The defendants also averred that they complied with all the requirements of the letter of credit and proper documentation was presented to and accepted by the plaintiffs and the property in the winch passed to Santan.

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21 Burden of proof

22 The plaintiffs bear the burden of proof and the standard of proof is on a balance of probabilities.

23 In the present case, fraud is alleged against the defendants. The more serious the allegation, the higher degree of probability is required; but I am mindful that it need not reach the very high standard required by criminal law. This test was approved by Denning LJ in Hornal v Neuberger Products Ltd < 1957 > 1 QB 247.

24 The Evidence

25 At the trial the plaintiffs called two witnesses and the defendants also called two witnesses.

26 The plaintiffs' first witness was the Receiver, Peter Chi Man Kwong who was appointed by Four Seas Communications Bank Ltd. In his evidence, he said that as he could not find the winch, he did not investigate the validity of the trust receipt relating to the winch. He said he was not aware of the hire purchase transaction and knew this only when he began to investigate the whereabouts of the winch. His evidence was not useful as he did not have any direct knowledge of the transaction in issue.

27 The next witness the plaintiffs called was one Chan Swee Nee < "Chan" > , a manager of the credit/correspondence banking department. The questions directed to him by the defendants firstly dealt with ascertaining whether he knew that a delivery order was not a document of title and that the plaintiffs did not obtain security over the winch through the trust receipt as a document of

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title. On this line of cross-examination, I told the defendants' counsel that this was a matter of law and I would not place much weight on the evidence of the plaintiffs' witness.

28 Through the evidence of Chan, the defendants were able to establish that the plaintiffs had required the amendments to the application for letter of credit and did not inquire from Santan the nature of the transaction for which the letter of credit was being established. The evidence of Chan was that he assumed that a new winch will be physically delivered under the letter of credit. Although he assumed that the letter of credit was for an outright purchase of a winch, he did not ask Santan of the nature of the transaction. He also agreed that if the winch was still in the possession of Santan, he would proceed on the trust receipt to recover the winch. From his evidence, I determined that the plaintiffs were really not concerned with the manner in which the letter of credit facility was utilised. It was not agreed with Santan that the letter of credit was to be for a new or future transaction.

29 The defendants tendered the statements of Fong Chee Eng < "Fong" > and Tan Kim Bee <"Tan"> and called them to give evidence. Fong's evidence was only relevant to the extent that he was responsible for the sale of the said winch under the hire purchase in 1983. He identified the hire purchase agreement and said that he witnessed the signature of the defendants' representative and arranged for Santan's representatives to sign the hire purchase agreement. He also instructed the delivery of the winch.

30 I regarded Tan's evidence as most relevant as she was at the material time the credit assistant of the defendants and was directly involved in the preparation of the documents against which payment under the letter of credit

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was obtained by the defendants. She was able to give evidence on the transaction in its entirety. She said that the winch was delivered to Santan by the defendants on 12 November 1983. The hire purchase agreement would be sent back to her department for safekeeping and this was done. The invoice which also evidenced the delivery of the winch was returned to her department. She was aware that a sum of $200,000 was still owing on the winch under the hire purchase agreement as the sum due was regarded as a debt in the debtors' ledger kept by her.

31 Tan was also aware that the letter of credit was established to pay the balance of $200,000 owing on the winch. She prepared the delivery order on 12 July 1985 and gave it to her staff in the sales department to obtain the signature of Santan's authorised signatory. She confirmed that when Santan failed to pay the monies due under the hire purchase agreement, her management gave them more time to pay the debt and charged interest. She said that her management advised her that the letter of credit was to cover the balance due on the winch under the hire purchase agreement. She knew this, as when she negotiated the letter of credit, she had to allocate the funds to the relevant invoices.

32 What went on in her mind, I regarded as relevant to determine whether the invoice and delivery order were prepared with a fraudulent intent and with the purpose of misrepresenting falsely to the plaintiffs that a winch was being physically delivered on the date of the invoice when the letter of credit was negotiated.

33 Having considered the totality of the evidence and having heard the witnesses, I accepted the evidence of Tan and concluded that no fraud or false representation was intended. Her evidence was that she believed that the

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physical delivery in November 1983 was sufficient for the purpose of delivery under the letter of credit and accepted the letter of credit and prepared the documents for negotiation on that basis.

34 List of issues

35 The parties submitted nine issues in their list of issues and having heard the evidence, I found for the defendants. In law when goods are already in the physical possession of a buyer and a further act needs to be done by the buyer to acquire title in the goods, ie making payment or arranging for irrevocable payment, then by doing that act there is constructive delivery of the goods from the seller to the buyer. A further act of physical delivery is unnecessary; see Manton v Moore (1796) 7 Term Rep 67; 101 ER 858.

36 If I am wrong that a physical delivery in November 1983 was sufficient to support the statement in the delivery order, then there was also a sufficient constructive delivery of the winch when payment was made under the letter of credit of the balance monies due under the hire purchase agreement and which enabled title in the goods to pass to Santan. The statement in the delivery order of acknowledgement of goods in good order and condition effectively gave constructive delivery of the winch by way of sale to Santan on the date that acknowledgement was signed. Irrevocable payment arrangements under the hire purchase agreement were made and Santan exercised the option to purchase the winch. The defendants gave good consideration for the payment under the letter of credit by transferring title in the winch to Santan.

37 I find that the defendants did not have any fraudulent or dishonest intention when they tendered the delivery order to negotiate the letter of credit.

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I find that the defendants honestly believed that the physical delivery in November 1983 under the hire purchase agreement was sufficient to satisfy the letter of credit requirements and that is the delivery they had in mind when they prepared and negotiated the letter of credit.

38 From the evidence and particularly from the amendments made to the letter of credit and the letter of Tan Pong Tyea dated 30 November 1985, I also find that Santan had no fraudulent intention at all when they applied for the letter of credit. For the reasons aforesaid, the plaintiffs' action is dismissed with costs.

39 (This does not merit reporting)

Punch Coomaraswamy J

Chew Swee Leng (Cooma, Lau & Loh) for the plaintiffs
Ajaib Haridass (Haridass Ho & Partners) for the defendants

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