

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 98

93SC134DOC

Between

Jacky's Electronics (S) Pte Ltd

... Plaintiff

And

Komrades Air Sea Forwarders
Pter Ltd

... Defendant

GROUND OF DECISION

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**Jacky's Electronics (S) Pte Ltd v Komrades Air Sea
Forwarders Pter Ltd**

[1993] SGHC 98

93SC134DOC
Lai Kew Chai J
05 May 1993

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Judgment:

2 Coram: Lai Kew Chai J

3 ORAL JUDGMENT

4 This action, which was started on 14 October 1989 by Jacky's
Electronics (S) Pte Ltd

against Komrades Air/Sea Forwarders Pte Ltd (formerly known as Komrades
Air & Sea

Forwarders Pte Ltd), was founded on an alleged breach of the contract of
bailment

allegedly entered into between the plaintiffs and the defendants and under which

the

plaintiffs allege the defendants had failed or refused to deliver to them a total of

44,000 rolls of film. Of those films, it was alleged that 18,100 rolls of Konica SR-V100

135-24 and 25,800 rolls of Konica SR-V100 135-36 were missing. It was also alleged that

100 rolls of Konica SR-V200 110-24 discharged from motor vessel "Gao Cheng" were

damaged. The claim in contract was the value of the Konica films at \$133,136.

5 The bulk of the rolls of Konica film was discharged from motor vessel "YS

Prosperity" which was contained in two containers. They were said to have been

contained in 422 cartons, each of which contained 10 boxes and each box contained 100

rolls of film. They were allegedly sold by United Sources Trading Co ("USTC") of

Dubai to Jacky's International, a limited company in Hong Kong.

6 In the alternative, the plaintiffs also claim damages for conversion, presumably in the same sum. For them to succeed in the tort of conversion, the plaintiffs have to prove on a balance of probabilities that they were the owners of the Konica films.

7 The plaintiffs are a company dealing in Konica films in Singapore and the secretary of the managing director, Ms Meenatshi Sundari Bagavathy (PW1), gave evidence on behalf of the plaintiffs. PW2, Mr Govindasamy Kovalakrishnan, who went by the name of Mr Gopal, also gave evidence on behalf of the plaintiffs. PW2 was at all material times a sole-proprietor

of G K Express, which was a sole-proprietorship in 1988, and was in the forwarding

business. Since 1989 the sole-proprietorship was converted to a private limited company of

which PW2 is the managing director. Ms Sundari engaged G K Express to collect and store

the Konica films and to effect deliveries of parts of the consignment to customers of the plaintiffs in Singapore.

8 According to the evidence, there were altogether three storages of three containers of

Konica films. Mr Gopal was introduced to Mr Karuppiah (known as "Kannan") of

defendants by a family friend sometime in October 1988. Shortly thereafter the plaintiffs

informed Mr Gopal of the anticipated arrival of the first batch of Konica films. Mr Gopal

visited Mr Karuppiah and he said in evidence that he discussed the terms of storage. He

agreed on the rate to be charged for the storage of the goods. He also said that

eventually he paid for the storage charges directly out of his own sole-proprietorship and

he charged the plaintiffs a separate and a higher storage rate. He, of course, went on to

say that he did tell Mr Karuppiah of the defendants that G K Express were not
the owners

of the rolls of Konica film.

9 In the event, the first shipment arrived in December and was stored in
the defendants'

premises for which a Storing Order was issued by the defendants in favour of G
K Express.

The second Storing Order was issued for the second shipment. The defendants
duly returned

all the rolls of film. Both shipments are not really directly in issue nor involved
in

this action except for the 100 rolls of film which were damaged and which I
mentioned

earlier.

10 It is the third shipment which looms large in this case. As evidenced by
Storing Order

No 1283 issued by the defendants in favour of G K Express, 422 cartons of
specified

measurements were stored with the defendants. Under the column 'Marking & Number',

there were stated "Konica Films". It is significant to note there is no mention of any agency whatsoever in this document. For eg. G K Express was not described as

"Agents of (the plaintiffs)" or simply "As Agents". Secondly, and it is not really material but worthwhile to mention, the defendants had stamped on the

documents just above the signature the words "Goods & Quantity unchecked".

There is no other document disclosed in this court which connected or indicated a nexus

between the plaintiffs and the goods.

11 We have to return to the oral evidence of both Ms Sundari and Mr Gopal. All it boils

down to is that there is evidence that Ms Sundari visited the defendants' premises after

the first visit of Mr Gopal in which Mr Gopal had come to a provisional

agreement on some

matters, particularly the rate of the storage charges. Ms Sundari later inspected the

defendants' premises and expressed the view that they were acceptable for storage. Mr

Gopal said that Ms Sundari had said to Mr Karuppiah that plaintiffs were the owners of the

goods. Mr Gopal went on further to say in evidence that he had told Mr Karuppiah that G K

Express was not the owner of the goods in question. That was the sum total of the evidence

bearing on the question whether the plaintiffs were an undisclosed principal in privity

with the defendants under the contract of bailment as evidenced in the third Storing

Order.

12 I turn first to the question whether there was an expressed contract of bailment which

was entered into by G K Express on the express authority of the plaintiffs. There is

absolutely no evidence from either Ms Sundari or Mr Gopal which begin to establish that Ms

Sundari on behalf of the plaintiffs had clothed Mr Gopal trading as G K Express with the

express authority to enter into any contract of bailment for and on behalf of the

plaintiffs. Mr Suresh on behalf of the plaintiffs stressed that he relies on the doctrine

of undisclosed principal between the plaintiffs and the defendants. Now, he is saying that

a court could in certain circumstances infer by an agent's disclosure of the existence of

the principal to the other party which would result in the formation of a contract which

was in truth and in substance entered into between the other party and the undisclosed

principal. Nominally, the contract was apparently formed between the agent (though not

mentioned as such) and the other party. If a person is an undisclosed principal in

connection with a contract, it is of course the law that that undisclosed principal can

sue the other party to the agreement simply because the underlying principle is that the

other party had known or ought to have known that he was contracting with the undisclosed

principal. This common law development of the doctrine was in recognition of the growing

multiplicity of parties involved in transactions, particularly like the middleman,

referred to by Lord Lindley in *Keighley, Maxsted & Co v Durant* < 1901 > AC 240

at 261. But as rightly pointed out by Mr Jeyaretnam that case does not help the plaintiffs

at all because it was a case that principally dealt with the question of ratification.

Each case must turn on its own facts. There is nothing here on the evidence given by the

plaintiffs to suggest that what they have said about ownership was enough to
impute on Mr

Karuppiah the knowledge and therefore his agreement and consent that he was
entering into

the contract with the plaintiffs as owners of the Konica films. Now, I need not
say much

about *Stockton v Morton* < 1979 > RTR 130 which was relied by Mr Suresh.
Again, I am

in agreement with Mr Jeyaretnam when he said that that case dealt with the
ambit of the

authority of the insurance broker who was clearly the agent of the insurance
company and

where, in a particular situation, that insurance broker could and would bind his

principal. We are concerned with the question of who was the contracting party
rather than

with the ambit of an agent's authority.

13 So quite obviously, there is completely insufficient evidence to prove on
a balance of

probabilities that the contract of bailment as evidenced by the Storing Order of
16

December 1988 found in AB7 was entered into between G K Express and the
defendants with

the plaintiffs as the undisclosed principal. I find that the plaintiffs were a total

stranger and a third party wholly unconnected in contract with the defendants
in respect

of the storage for bailment of 422 cartons of Konica films.

14 I turn very briefly to the state of evidence on the ownership of the rolls
of film. The

question of ownership is most important on the plaintiffs' alternative claim
founded on

the tort of conversion. Although Mr Suresh had conceded that the plaintiffs had
certain

difficulties of proving ownership, I must say that the evidence of the plaintiffs'
alleged

ownership of the goods is wholly unsatisfactory. They had produced a copy of
the original

bill of lading but it was generally endorsed. Evidence was given that the plaintiffs had

possession and control of the 422 cartons but as everybody knows possession is not

ownership. They could have been agents for the true owners, Jacky's International. If it

had been a suit in detinue, it seems to me on the evidence the right to possession so far

as the defendants were concerned was G K Express because it was G K Express who had stored

the goods with them. In terms the Storing Order stated "This Storing Order must be

produced when delivery of Cargo is requested". So far as the 422 cartons of Konica

films are concerned, they were said to have been sold by USTC of Dubai to a company in

Hong Kong which appears to have been associated with the plaintiffs. Who paid for the

goods? On that question there is absolutely no evidence.

15 I should also say a few words on the attempt to prove ownership at the resumed hearing

this afternoon. Ms Sundari attempted to produce the debit notes under which the Hong Kong

company purportedly debited the accounts of the plaintiffs in a running account between

the two entities. Accompanied with the debit notes were copies of Bank of Credit and

Commerce Hong Kong Ltd's advice of the negotiation of a draft drawn by USTC and the

invoice of USTC. The latter two documents were withdrawn by Mr Suresh because there was no

compliance with s 63 and following of the Evidence Act. I came to the conclusion that the

pre-conditions as set out in s 32 of the Evidence Act were not complied with. There was in

fact no evidence as to who the maker of the debit notes was, let alone evidence

to show

that the maker could not have been called to give evidence on the debit notes without

unreasonable expense.

16 A further attempt to establish ownership was made by Ms Sundari producing a list of

ledgers. She was not the maker of that document which allegedly recorded the debiting of

the plaintiffs in the running account between the plaintiffs and the Hong Kong associated

company. By that evidence it was sought to be established that the plaintiffs had given

value for the rolls of Konica film and therefore they could properly claim that they were

owners of the goods. Here again, I declined to admit the list of ledgers because it was

not shown to me that it was too expensive or not possible or otherwise unreasonable to

procure the attendance of the maker to give evidence as required by s 32 to
enable hearsay

evidence to be introduced. Obviously, we have to observe the provisions of s 32
which is

an exception to the hearsay rule. If s 32 applies the other party will have no
opportunity

to cross examine on the evidence admitted. We must therefore be careful and
take steps to

ensure compliance with the pre-conditions as set out in s 32 of the Evidence
Act.

17 So, at the end of the case for the plaintiffs, Mr Jeyaretnam made the
submission of no

case to meet. On being put to election whether to call evidence or not, he
confirmed that

the defendants would elect not to call any evidence if my ruling had gone against
the

defendants. Now, in view of what I had said, it is quite clear that the plaintiffs
had not

proved their claims founded in contract or in tort.

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18 Their claims are accordingly dismissed with costs.

Lai Kew Chai J

Suresh Damodara (Muru Rajah & Partners) for the plaintiffs
J B Jeyaretnam (J B Jeyaretnam & Co) for the defendants
