IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1994] SGCA 60

CA 157/1993

Between

Hong Realty (Pte) Ltd

… *Appellant*

And

Chua Keng Mong

… *Respondent*

GROUNDS OF DECISION

Bailment; Contract

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

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Hong Realty (Pte) Ltd v Chua Keng Mong

[1994] SGCA 60

CA 157/1993
Karthigesu JA; L P Thean JA; Yong Pung How CJ
21 April 1994

1 Cur Adv Vult

2 This is an appeal from the judgment of Goh Joon Seng J who awarded damages to the respondent in the sum of $224,503.84 with interest at 6%pa from the date of the damage to his goods (20 December 1986) to the date of judgment (25 October 1993). At the material time the respondent was a supplier and exporter of wallpaper and carpets and had stored his goods in the warehouse of the appellants at 351 Upper Bukit Timah Road where they were damaged by water in circumstances as will appear hereafter. The appellants at all material times were warehousemen for reward. This appeal is confined only to the question of liability of the appellants.

3 The judgment of Goh Joon Seng J is reported at [1994] 1 SLR 73 .

4 The relationship of bailor and bailee between the respondent and the appellants goes back to the time in 1985 when the appellants bought over the warehouse at 351 Upper Bukit Timah Road from Hume Industries. In fact the respondent stored his goods at 351 Upper Bukit Timah Road from 1976 or 1978 when Hume Industries owned and operated the warehouse at 351 Upper Bukit

Timah Road. The respondent`s evidence was that he rented space at the warehouse at 351 Upper Bukit Timah Road firstly from Hume Industries and after 1985, from the appellants. He said that in December 1986 he was paying the appellants $2,500 per month for `around 1,500 sq ft`.

5 The relationship of bailor and bailee between the respondent and the appellants was confirmed in a letter dated 22 April 1986 in which the appellants stated the terms and conditions under which they would accept the respondent`s goods for storage in their warehouse. The respondent duly accepted the terms and conditions by duly signing the said letter dated 22 April 1986. Reference will be made to this letter later in this judgment and will be referred to as `the contract of bailment`. The period of bailment covered was from 1 May 1986 to 30 April 1987.

6 In or about November 1986 the appellants commenced renovation and refurbishment works to the office section of the warehouse. Although these works did not entail the storage area of the warehouse, the attendant works connected with the fire protection services did. These latter works involved the cutting of a section of the existing overhead water supply pipe situated in the storage area of the warehouse and the installation of a `T` joint. Accordingly on the morning of Saturday, 20 December 1986 at about 11am, two workmen in the employ of Armour Fire Engineering Pte Ltd, the specialist sub-contractor employed by the main contractor, Wee Siang Pte Ltd, engaged by the appellants for the renovation and refurbishment works, arrived at the warehouse and sought permission of the maintenance officer in charge of the warehouse, one Paul Thanapal (Thanapal), to enter the storage area to carry out the work of installing a `T` joint in a section of the existing overhead water supply pipe.

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7 Thanapal said in his evidence that he inquired of the two workmen how they were going to carry out the work and that the two workmen had explained to him that the main valve to the main water supply line would be shut and the water drained out of the system before they cut a section out of the overhead water supply pipe. The `T` joint would be installed in the section cut out. Satisfied with the manner in which the work was going to be carried out Thanapal sent word to the store supervisor that he had granted permission to the two workmen to enter the storage area to carry out the intended work. At about 12.30pm he had gone round to the storage area of the warehouse to see how the work was progressing and to tell the workmen that the warehouse would be closing at 1pm and if the work could not be completed by then, they would have to come back on Monday to complete the work. He noticed the two open ends of the overhead water supply pipe from which a section had been cut out. He noticed that no water was coming out and inquired whether the main valve had been shut tight. He was assured by the two workmen that it was. Satisfied with this answer he had returned to his office. At about 1pm the two workmen informed Thanapal that they would return on Monday to complete the work and again assured him that the main valve was shut tight.

8 When the warehouse was re-opened at 8am on Monday, 22 December 1986, it was discovered that the area under the cut ends of the overhead water supply pipe was flooded. This was the area where the respondent`s goods were stored and some of his wallpaper and carpets were soaked. The respondent was sent for and when he arrived at the warehouse at about 10.30am he said he saw water dripping from the open cut ends of the overhead water supply pipe. Later, at about 4.30pm, the open cut ends were capped with metal caps to prevent further leakage of water. However, before this was done the respondent testified

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that there was a gush of water at about 11am and another flow of water at about 2pm.

9 Returning to the evidence of Thanapal, it is pertinent to note that he did not discuss with the two workmen what other precautions should be taken to prevent the leakage of water from the open cut ends of the overhead water supply pipe apart from seeking and obtaining an assurance that the main valve was shut tight. He was cross-examined on whether it had occurred to him on the Saturday when he for the first time saw the open cut ends that they should be capped to assure that there would be no possible leakage of water, his answer was that it did not occur to him because it was not necessary as the valve had been shut and there was no water. When asked whether with hindsight he would agree that the open cut ends should have been capped especially since the warehouse would be closed for the weekend, his answer was in the negative and he maintained that the shutting of the valve was an adequate precaution.

10 Originally the respondent commenced his action for damages against the appellants and Armour Fire Engineering Pte Ltd. Later, Wee Siang Pte Ltd was added as a defendant but when the action came on for hearing Wee Siang Pte Ltd had been wound up and Armour Fire Engineering Pte Ltd had virtually ceased business. Hence the action was proceeded with solely against the appellants.

11 The respondent formulated his claim against the appellants in tort alleging that they or their servants or agents were negligent in the care and custody of the goods and in breach of duty by reason whereof part of the goods were damaged. Particulars of negligence were given. Alternatively, the respondent alleged that he delivered and entrusted his goods to the appellants to be safely kept and taken care of by them, their servants or agents pursuant to an

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agreement (the contract of bailment) from which it would be implied that the appellants:

> (a) as warehousemen for reward would keep the goods safely and take due and proper care and custody of them;
>
> (b) would not carry out any activity in the warehouse whereby the goods may be endangered or put to risk;
>
> (c) would not carry out such activity without giving adequate and due notice of such activity to the respondent; it is common ground that the appellants did not give any notice to the respondent that the work in question, that is to say the installation of a `T` joint in the overhead water supply pipe, was going to take place.

12 The appellants denied negligence and in any event claimed that they were saved from liability by the exemption clauses contained in the contract of bailment. The exemption clauses relied on by the appellants were cll (ii) and (iii) which read:

> *(ii) Goods are not insured by Hong Realty (Pte) Ltd but lie in the godown entirely at owner`s risk. Hong Realty (Pte) Ltd however, will endeavour to effect an insurance on behalf of the owner, provided they receive instructions in writing, and the premium is duly paid or agreed to be paid by the owner prior to the goods being received for storage.*
>
> (iii) Hong Realty (Pte) Ltd will not be responsible for the condition or contents of any package received for storage, nor for loss of weight or for any loss or damage to the said goods, before or whilst being stored or remaining on storage, caused by Act of God, enemies, hostilities, strikes lockouts riots restraint of princes rulers or people, effects of climate, monsoons, tempests, torrential rains, floods sea or water, temperature changes, heat, fire, lightning, earthquake, explosion, vermin, white ants, unprotected or insufficiently protected castings or machinery, defective or insufficient packing or packages, obliteration of marks, hook holes tearing or covers bursting of bands or hoops, leakage, rust, decay, sweat, mildew, dryrot, evaporation fumigation, accidents, latent or patent defects of the godown, floods or natural causes, or circumstances over which Hong Realty (Pte) Ltd have no control, misfeasance, error in judgment, theft, burglary, forgery

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> of documents or title or the forgery of any documents by means of which any unauthorized person obtained possession of the goods, negligence or default of the company`s servants or agents and any person acting for or under the employ of the company.

13 On the question of negligence and the breach of duty of a bailee or warehousemen for reward, the learned judge referred to ***Morris v CW Martin & Sons*** per Diplock LJ at p 734 and 735; 2 ***Halsbury`s Laws of England*** (4th Ed) para 1539; and ***Brabant & Co v King*** per Lord Watson at pp 640-641. He then discussed the evidence, in particular that of Tan Lye Woo, a senior draftsman in the employ of the appellants` architects, Akitek Regional, and Ong Chin Poh of the firm who installed the fire alarm at the appellants` warehouse. Both these witnessses gave evidence for the appellants to the effect that it was not prudent to rely solely on the draining of water from the system and the shutting off of the main valve where water supply pipes such as the one in question had been cut leaving exposed two cut ends without at least having pails under the cut ends `to catch the dripping water if any`. The learned judge concluded as follows:

> *I therefore hold that in allowing the two cut off ends of the overhead pipe to remain uncapped from 20 to 22 December 1986 without a pail below each cut off end of the pipe to catch any dripping water when the warehouse was closed for the weekend, the first defendants (the appellants) had not taken reasonable care to see that the area where the plaintiff`s (respondent`s) wallpaper and carpets were stored was fit and proper storage for such goods.*

14 We are in agreement with the conclusion reached by the learned judge, both on the facts and in law, that the appellants were negligent in the discharge of their duty of care as bailees of the respondent`s goods. The evidence of negligence is incontrovertible. Both Tan Lye Woo and Ong Chin Poh who were the appellants` witnesses expressed opinions that it would be imprudent to leave the cut ends of a pipe in the water supply system open over the period of a

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weekend without capping the open ends or at least providing buckets or pails under the open cut ends to gather any dripping water, notwithstanding that the main valve to the water supply system had been shut tight and the system drained of water within it. Thanapal, the person in charge of the warehouse was aware that the cut ends of the pipe in the water supply system were going to be left open over the weekend. It did not occur to him that leaving open the cut ends of the pipe would cause a hazard to the goods stored in the warehouse from being damaged by water leaking from the open ends of the pipe notwithstanding that the main valve had been shut tight. In our judgment, Thanapal`s negligence was failing to realize that this could happen since he did not know how effectively the water had been drained out of the system. It was certainly foreseeable and furthermore Thanapal should have sought expert advice and not relied on the two workmen who had implied that by shutting off the main valve the likelihood of water dripping from the open cut ends of the pipe was eradicated.

15 The two workmen who did the work were also negligent in the execution of their work; either they failed to drain the water completely from the system or they failed to take the ordinary precaution of providing buckets or pails under the cut ends of the pipe to gather any dripping water which may still have remained within the system. The two workmen as employees of the specialist sub-contractor engaged on behalf of the appellants were undoubtedly agents of the appellants.

16 The appellants` contention before us was that the appellants had discharged their duty of care as bailees or warehousemen by entrusting the work undertaken in the storage area of the warehouse to Armour Fire Engineering Pte Ltd whom they had no reason to suspect were anything but competent. This contention begs the question. The appellants` duty, in our judgment, was more

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than that. It was to take reasonable care to see that the place where the respondent`s goods were kept was fit and proper for that purpose and to protect the goods against unexpected danger should any arise. In failing to take the necessary precautions to obviate water dripping or flowing out of the open cut ends of the pipe in the water supply system in the storage area of the warehouse apart from shutting off the main valve the appellants failed to render the storage area in the warehouse, over the weekend of 20 to 22 December 1986, a fit and proper place for the storage of the respondent`s goods. The principle of law is stated in the case of ***Brabant & Co v King*** cited by the learned judge in his judgment as well as in ***Searle v Laverick*** at p 126 where Blackburn J, delivering the judgment of the court which consisted of himself, Mellor and Lush JJ, said:

> *The obligation to take reasonable care of the thing intrusted to a bailee of this class [he was referring to a thing entrusted for safe custody] involves in it an obligation to take reasonable care that any building in which it is deposited is in a proper state, so that the thing therein deposited may be reasonably safe in it.*

17 The negligence or the want of care of the appellants as found by the learned judge, with which we agree, is that the appellants failed to render the storage area in the warehouse, over the weekend of 20 to 22 December 1986, a fit and proper place for the storage of the respondent`s goods by failing to take the necessary precautions to obviate water dripping or flowing out of the open cut ends of the pipe in the water supply system in the storage area of the warehouse. This finding, in our judgment, is of extreme importance in dealing with the exemption clauses relied on by the appellants. Certainly before 20 December 1986, the storage area in the warehouse was a fit and proper place for the storage of goods, including those of the respondent. What rendered it unfit was the intervention of the works undertaken to install a `T` joint in the overhead water supply pipe in the storage area.

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18 Now, when the respondent entered into the contract of bailment with the appellants, which included exemption cll (ii) and (iii), it could not have been in the contemplation of either of them that these exemption clauses would apply in circumstances other than in which the storage area in the warehouse was prior to the intervention of the works undertaken on 20 December 1986. Thus had there been a leakage of water in the overhead water supply system through some patent defect before 20 December 1986 and the respondent`s goods had been damaged we have no doubt that exemption cll (ii) and (iii) would have relieved the appellants of liability. It will be remembered that exemption cl (ii) provides that the goods stored at the appellants` warehouse are stored there `at owner`s risk` and cl (iii), inter alia, exempts the appellants from the negligence or default of their servants or agents and any person acting for or under the employ of the appellants. On the other hand since the water damage to the respondent`s goods occurred between 20 and 22 December 1986, a period during which the works undertaken in the storage area of the warehouse had intervened, and in the circumstances of the learned judge`s finding (above referred to), with which we have concurred, thereby rendering the storage area, between 20 and 22 December 1986 unfit as a proper place for the storage of goods, exemptions cll (ii) and (iii) cannot, in our judgment, operate to relieve the appellants of liability. To give another example, if for instance owing to the negligence of Thanapal, the door to the warehouse was not securely locked and third parties entered and stole or vandalized the respondent`s goods such negligence would come within exemption cll (ii) and (iii).

19 The foregoing we apprehend is a correct application of the of tests enunciated by Lord Morton of Henryton in ***Canada Steamship Lines v R*** at p 310. He said:

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> *Their Lordships think that the duty of a court in approaching the consideration of such clauses [he was referring to exemption clauses] may be summarized as follows: (i) If the clause contains language which expressly exempts the person in whose favour it is made (hereafter called `the proferens`) from the consequence of the negligence of his own servants, effect must be given to that provision ... (ii) If there is no express reference to negligence, the court must consider whether the words used are wide enough, in their ordinary meaning, to cover negligence on the part of the servants of the proferens ... (iii) If the words used are wide enough for the above purpose, the court must then consider whether `the head of damage may be based on some ground other than that of negligence` to quote again Lord Greene MR in the* ***Alderslade*** *case [1954] 1 All ER 244. The `other ground` must not be so fanciful or remote that the proferens cannot be supposed to have desired protection against it, but, subject to this qualification, which is, no doubt, to be implied from Lord Greene`s words, the existence of a possible head of damage other than that of negligence is fatal to the proferens even if words used are prima facie, wide enough to cover negligence on the part of his servants.*

20 It is trite law that exemption clauses must be construed strictly and this mean that their application must be restricted to the particular circumstances the parties had in mind at the time they entered into the contract. On any view of the matter the respondent and the appellants could not have intended that the exemption clauses in the contract of bailment would apply when some act had intervened to alter the circumstances in which the exemption clauses would ordinarily apply.

21 Although we have taken a slightly different approach from the learned judge we have both arrived at the same conclusion. For the reasons we have given in this judgment we will dismiss the appellants` appeal with costs. We direct that the security deposit for costs be paid out to the respondent or their solicitors to account of the respondent`s costs.

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Karthigesu JA
L P Thean JA
Yong Pung How CJ

Ravi Chelliah and Chua Eng Chiang (Cooma, Lau & Loh) for the appellants
Shantini Ramachandra (Wee Ramayah & Partners) for the respondent

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