IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 177

Suit 4393/1986

Between

Caterpillar Far East Ltd

… *Plaintiff*

And

CEL Tractors Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Personal Property — Market overt; Tort — Conversion

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

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Caterpillar Far East Ltd v CEL Tractors Pte Ltd

[1994] SGHC 177

Suit 4393/1986
Yong Pung How CJ
30 June 1994

1 Cur Adv Vult

2 This is a claim by the plaintiffs in respect of the alleged conversion by the defendants of Caterpillar spare parts belonging to them. The material facts of the case are as follows.

3 In 1983, Mohammad Taz Khan (`PW3`) and Ramachandra s/o Ahinoo (`PW4`) were employed by the plaintiffs as security guards at the plaintiffs` warehouse at 14 Tractor Road. PW3 conceived a plan to steal some of the Caterpillar spare parts stored in the warehouse and to profitably dispose of these parts to third parties. He obtained PW4`s agreement to his plan and also enlisted the help of one Doris Liauw Pow Min (`PW5`), then employed by him in a company of which he was the proprietor. PW5 was asked to find someone who could help PW3 find a buyer for the spare parts to be stolen from the plaintiffs` warehouse (though it appears that PW5 was at that point unaware that the goods would be stolen goods). She proceeded to introduce her then husband, Ng Kin Sai (`PW8`), to PW3 as someone with experience in the sale and disposal of spare parts.

4 The precise details of the thefts are not important. Essentially, it was agreed that the Caterpillar spare parts would be stolen on the nights on which PW3 and PW4 were both on the same night shift. The following morning, PW8 would come in a rented vehicle to the plaintiffs` warehouse in Tractor Road to collect the stolen goods at about 5am. In the meantime, PW8 had been looking for a buyer for these stolen spare parts. He found the defendants listed in the Yellow Pages and approached the defendants` sales director, Jimmy Lim Chee Teck (`DW1`), in an effort to solicit business. PW8 represented himself to DW1 as the director of Unibone Enterprises. He informed DW1 that he had Caterpillar spare parts for sale at competitive prices. There appears to have been one visit by PW8 to the defendants` office at 4 Horne Road as well as several telephone calls by PW8 to DW1 before DW1 agreed to place a trial order with PW8. DW1 testified that, for the first trial order, PW8 gave him a list of the Caterpillar spare parts in his possession. DW1 chose an item from this list which PW8 subsequently produced. After some negotiation, the two of them agreed on the prices the defendants were to pay for these spare parts. The defendants were given an initial 30% discount off the Caterpillar consumer list price, which they ascertained from a copy of the Caterpillar price list book. Both PW8 and DW1 testified that this 30% discount was normal in the trade. On top of this 30% discount, a further discount of 55% was given to the defendants, this reduction being agreed on after some bargaining between the two of them. During the trial it was agreed by both parties that the price paid by the defendants for the Caterpillar spare parts after the discounts given amounted to 31% of the then consumer list price of such parts.

5 In brief, the manner in which subsequent sales transactions took place between PW8 and DW1 was as follows. DW1 would write down on foolscap paper a list of the part numbers of the Caterpillar spare parts he was interested

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in buying and hand PW8 a copy of the list while retaining another copy for himself. PW8 would give the list to PW3 who, together with PW4, would then steal as many of the parts as were available from the plaintiffs` warehouse. The stolen parts were collected by PW8 the following morning. PW8 claimed that he then delivered these parts to the defendants` office in Horne Road and presented them to DW1. DW1 would pay PW8 in cash which he took from the defendants` petty cash account or by means of a cash cheque. An invoice in respect of the sale in question would be issued by PW8. At the trial, a total of ten such invoices were produced: they all purported to be invoices of Unibone Enterprises. These invoices were made out `to cash` instead of stating the name of the defendants. On several occasions, PW8 produced items which had not been requested by DW1 but which DW1 was persuaded to buy after PW8 gave him yet another 50% reduction on the price, in addition to the 30% and 55% discounts already granted.

6 On 31 October 1983, the plaintiffs` store operations manager, David Tan Im Cheng (`PW7`), made a police report at Jurong Police Station stating that as between January 1983 and September 1983, an assortment of Caterpillar spare parts valued at about $500,000 had been discovered missing from the plaintiffs` warehouse at 14 Tractor Road. On 10 November 1983, PW8 was arrested by the police and his accomplices too were arrested later. PW3, PW4, PW5 and PW8 were duly charged in court with the theft of Caterpillar spare parts valued at $500,000. They pleaded guilty to the charges. They were duly sentenced and have served their prison sentences.

7 The plaintiffs now bring this action against the defendants, claiming that all the Caterpillar spare parts which the defendants bought from Unibone Enterprises (as represented by PW8) were parts that had been stolen from the plaintiffs` warehouse by PW3, PW4, PW5 and PW8 acting in concert; that the

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entire circumstances surrounding the transactions between the defendants (who were the largest spare parts dealers in Singapore) and Unibone were such that the defendants should have shown prudence and adopted strict precautions to ascertain that they were obtaining a good title, consequently, that the defendants committed conversion in respect of the said goods in dealing with them without the plaintiffs` consent and in a manner inconsistent with the plaintiffs` rights of ownership in these goods. In support of the plaintiffs` claim, counsel referred the court to the following authorities: ***Hargreave v Spink***

8 ;1 ***Reid v Commissioner of Police of the Metropolis*** ; ***National Employers` Mutual General Insurance Association Ltd v Jones*** ; and ***Commercial & Savings Bank of Somalia v Joo Seng Co*** .

9 Prima facie, the plaintiffs would appear to have proven that PW3 and PW4 committed conversion in respect of the Caterpillar spare parts of which the part numbers are listed in the ten Unibone invoices. These were parts which had been stolen from the plaintiffs` warehouse by them acting in concert. The question which remained was whether, in buying these stolen parts from PW8 and subsequently reselling some of them to third parties while mixing the remainder with their own stocks in their own warehouse, the defendants were dealing with these parts in a manner inconsistent with the plaintiffs` rights of ownership in the said parts and had also therefore committed conversion.

10 In their defence, the defendants contended that there was in existence (and perhaps had been for a long time) an open and unconcealed free market in Singapore in spare parts, including Caterpillar spare parts. In the ordinary course of their business, the defendants purchased Caterpillar spare parts from a wide variety of sources, not only from the plaintiffs. These sources included companies in the USA, Europe, Japan and Singapore. In Singapore, these

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companies included a local spare parts dealer, Unibone Enterprise Co. If they had bought any spare parts of the plaintiffs, they had done so in good faith and without notice of any defect or want of title, and they had paid normal market prices for these goods.

11 Of course, the tort of conversion itself, as one aspect of wrongful interference with another`s goods, has presented difficulties of definition in its development in English law over the years. Originally called trover, the action for conversion alleged that the defendant had found the plaintiff`s chattels (hence the name `trover`) and had wrongfully converted them to his own use. In a contemporary context, it has been said that to constitute conversion, `there must be a positive wrongful act of dealing with the goods in a manner inconsistent with the owner`s rights, and an intention, in so doing, to deny the owner`s rights or to assert a right inconsistent with them: 45 ***Halsbury`s Laws of England*** .

12 This does not, however, put an immediate end to the matter. It is true that the general rule to be applied in the law relating to the transfer of title to chattels by non-owners is that ***nemo dat quod non habet*** . At the same time it is pertinent to note that various inroads have been made on this maxim, such that there now exist a number of exceptions whereby a bona fide purchaser of goods from X commits no conversion but actually obtains a valid title to them even though the goods really belonged to Y and Y never intended to allow X to sell them.

13 Of particular relevance in the context of the present case is the exception of market overt, to which reference was made by both counsel on argument before me and with which they dealt in some detail in their written submissions (although it was not pleaded earlier on by the defendants). In England, under s

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22(1) of the Sale of Goods Act 1979, `(w)here goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller`. The subsection in fact represents the statutory encapsulation of the rule adopted by the common law from mercantile custom: the ***Case of the Crown Jewels*** . Over time, however, the rule of market overt appears to have died out in the local boroughs and fairs in which it once thrived, save for the city of London, where, `by the custom of the city of London, of which judicial notice is taken, that part of every shop within the city to which the public is admitted without special invitation is market overt, between sunrise and sunset on all days except Sunday and holidays, for the sale by the shopkeeper of such goods as he professes to trade in`: 29 ***Halsbury*** .

14 It is plain from the above that in order for a sale to constitute a sale in market overt in the city certain conditions must be fulfilled. Equally plain is the fact that these conditions were delineated in an era and in circumstances far removed from a contemporary Singapore. It would scarcely be desirable or necessary, therefore, to import wholesale into the Singaporean context the rule of market overt as it has evolved within the English legal system, lest we become entangled with the specific characteristics of markets overt in England, which derive from circumstances alien to us.

15 That said, nevertheless, it appears to me that the principles underlying the rule of market overt are germane to the circumstances of the present case. The defence of market overt was made available in England simply because of the need to give recognition to the fact that any established and regular market in goods is a living entity, in which the sheer volume of trading transactions in everyday practice not only makes it impossible to afford complete protection to ownership in goods when possession is lost, but also makes it necessary to

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accord protection to an innocent buyer of goods in the market. Commerce has tended to proceed to a not inconsiderable degree on the assumption that a man in possession of goods and disposing of them in the way of his business is entitled to do so. Thus Coke, in ***Co Inst*** , remarked:

> *[T]he common law did hold it for a point of great policie, and behovefull for the common-wealth, that faires and markets overt should be replenished and well furnished with all manner of commodities vendible in faires and markets for the necessary sustenation and use of the people. And to that end the common law did ordaine (to encourage men thereunto) that all sales and contracts of any thing vendible in faires or markets over should not be good onely between the parties, but should bind those that right had thereunto.*

16 In a very real sense, these principles are not unique to the English context although, as the English example has shown, the precise scope of their operation in any particular place may well be constrained by local conditions and habits. The applicability of the principles to trading in goods in Singapore was indirectly recognized by Lai Kew Chai J in ***Commercial & Savings Bank of Somalia v Joo Seng Co*** when he said, in passing, at p 102F: `I am satisfied that the defendants did not buy from the market overt`. For over a century Singapore has thrived as a free port and busy trading centre for all kinds of goods within the region, a fact of which judicial notice can be taken. Merchants and traders compete freely with each other to purchase goods from the cheapest sources, and resell them on the market at the most competitive prices. We would materially hamper the transactions of the many established markets existing in Singapore if we refuse to concede the crucial relevance of the principles underlying the market overt rule.

17 In the present case, the Caterpillar group, like other assemblers of vehicles, heavy machinery and equipment, only manufactured a bare 20% of the parts they used to build their products, and bought the rest from independent

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suppliers. Evidence, which was not challenged, showed that the defendants bought Caterpillar spare parts not only from Tractors Singapore Ltd (the authorized agent for Caterpillar products) but also from Italian, Japanese and American suppliers. PW8`s own evidence was that in Singapore alone there were about 100 firms selling Caterpillar spare parts, and `you could get them from dealers anywhere`.

18 Much emphasis was laid by plaintiffs` counsel on the fact that the prices of the sales by Unibone to the defendants came to only about 31% of the Caterpillar customer list prices, and that these large discounts and excessively low prices would have put them on notice. I do not accept this contention. It has not been shown that there was anything furtive about PW8`s initial overtures to the defendants or the sales which followed which should have alerted DW1 to the possibility of the goods being stolen goods. Furthermore, the defendants have been able to show that the prices at which they bought from Unibone were not excessively low, as alleged, but were market prices which apparently fluctuated widely when the market was weak and stale stocks had to be got rid of. They have been able to show purchases from Italian sources at prices lower than the 31% discount at which they bought from Unibone. On one occasion, they even bought from Tractors Singapore Ltd (the authorized Caterpillar agent) Caterpillar spare parts worth about $269,000 according to the Caterpillar customer price list for a mere $5,000.

19 The existence in Singapore of a regular and open market in such parts is thus obvious from the above evidence, as are the quantity and variety of transactions being conducted in this market. It is clear that great public inconvenience and confusion would result if the rationale of the market overt rule could not operate. Of course, the relative facility of transfer of property in goods may in various instances make a `loser` of the original owner of goods

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which are converted, but such an `evil` (if indeed one can even call it that) is counterbalanced by the general practical virtues of a system that facilitates the passing of property in goods. It should also be pointed out that in the majority of cases, the original owner of the goods is covered by insurance, whereas it may be difficult for the innocent purchaser to enforce his remedy (and even if he is able to do so, it will be expensive).

20 In any event, property only passes to a bona fide purchaser for value who has no notice of the owner`s claim, and in the case of the defendants in this case, I find that they acted bona fide in their purchases. There was no reason for them to suspect that there was anything amiss in their transactions with Unibone Enterprises. It is contended that the large discounts given by PW8 should have alerted them and prompted them to question PW8 further as to his sources. I am satisfied from the evidence that, as a matter of fact, the period 1982-1983 was a period of difficulty for the industry and the market for spare parts was depressed, with the result that throughout the spare parts market huge discounts were being given to buyers to get rid of stale or slow moving stock and to raise cash. Furthermore, as pointed out earlier, the defendants were able to demonstrate that they had bought Caterpillar goods from other sources (such as Far East Plant) at prices which were at least as low as those which PW8 was charging them. Therefore, there was nothing inherently suspicious about the discounts that they obtained from Unibone, or indeed about the manner in which the sales transactions took place, which should have put them on notice.

21 The other point which should be made is that, in more cases than not, goods are stolen at least partly as a result of the carelessness of the owner or his servants, or at any rate their failure to take proper precautions to safeguard property. That this was so in the present case is manifest from the evidence led. The plaintiffs themselves admitted that they had been suffering thefts from their

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warehouse `from 1972 right up to 1983` (an astonishingly prolonged period) but that, other than the police report made by PW7 on 31 October 1983, no other police reports had been filed. Nor would it appear that the help of the police had been sought in any other way in the period prior to 1983. It was further admitted that the plaintiffs had never carried out stock checks after the occurrence of a theft to determine the exact items stolen. That there had been more than one group of thieves operating is clear. PW7 stated that he suspected employees other than PW3 and PW4 of stealing the plaintiffs` goods. Thus, for example, an attempted theft from the plaintiffs` warehouse was discovered on 24 October 1983, for which both PW3 and PW4 denied responsibility. PW3 himself had on at least one occasion come across evidence of attempted theft by some other groups of thieves. The plaintiffs also revealed during the trial that on average they lost an estimated $700,000 a year in goods missing from their warehouse. In 1983, the figure for the value of missing goods was as high as $1.4m. Yet no analysis had been attempted to discover the portion of goods missing due to theft, as opposed to goods missing due to employee error, etc. In other words, this was a situation in which the plaintiffs were well aware that their goods were being systematically pilfered over a prolonged period of time; in which they suspected that their own employees were responsible for these thefts; and yet in which they unaccountably refrained from taking any action for over ten years. It is true of course that there is no legal duty in general to prevent theft of one`s property. Nonetheless, it has to be said that the plaintiffs` conduct adds no merit to their case.

22 I should emphasize at this juncture that this court has been conscious throughout of the ***nemo dat*** rule and of the justifications for it. Certainly there is no question of allowing the exceptions to the rule to `swallow up` the rule

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itself; and what has been stated thus far in this judgment should be read in that light.

23 For the reasons I have given above, I hold that the plaintiffs` claim fails and is dismissed with costs.

24 ***Plaintiffs` claim dismissed.***

Yong Pung How CJ

P Selvadurai (Rodyk & Davidson) for the plaintiffs
Nathan Isaac (Nathan Isaac & Co) for the defendants

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