

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 222

Suit 2206/1986

Between

Ringler Pte Ltd

... Plaintiff

And

United Commercial Bank

... Defendant

GROUND OF DECISION

Bills of Exchange and Other Negotiable Instruments — Letter of credit transaction; Tort — Negligence — Duty of care; Tort — Conversion

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Ringler Pte Ltd v United Commercial Bank

[1994] SGHC 222

Suit 2206/1986
Lai Kew Chai J
30 August 1994

1 The plaintiffs claimed against the defendants the sum of \$144,136.80 under a letter of credit issued by the defendants` Johari Bazar, Jaipuri Branch, India on the ground that the defendants by reason of their delays were `precluded from claiming that the documents (were) not in accordance with the terms and conditions of the credit` within the meaning of art 16(e) of the Uniform Customs and Practice on Documentary Credits (1983 Revision) (ICC Publication No 400), all of which were incorporated by reference to the letter of credit with which this action was related.

2 Secondly, the plaintiffs claimed the same sum as damages for the defendants` negligence on the basis that in the circumstances of this case the defendants owed a duty of care to the plaintiffs not to issue a bank guarantee, which the defendants did and by reason of which it enabled the buyers of the goods and the applicant of the letter of credit, to take delivery of the goods without the original bills of lading duly endorsed by the plaintiffs.

3 Thirdly the plaintiffs claimed, under an amendment allowed by this court during the trial, the same sum against the defendants for having

wrongfully assisted the carriers in the tort of conversion committed against the plaintiffs. Counsel for the plaintiffs applied for the amendment after a discussion during which this court was satisfied that this cause of action was obviously contained within and was sufficiently self-evident to the defendants; at the end of it all, the merits of the plaintiffs' case must prevail.

4 At the conclusion of the trial, I gave judgment for the plaintiffs in the sum claimed, interest thereon at 8% pa from 3 January 1986 and one third of the costs of the proceedings on the basis that the plaintiffs failed on their first two causes of action but succeeded, in my judgment, on their claim against the defendants for having wrongfully assisted in the conversion of the plaintiffs' goods. The material facts, nearly all of which (unless otherwise indicated) were set out in a statement of agreed facts, and the reasons for my decision are set out below.

5 At all times material, the plaintiffs were importers and exporters. The defendants were and are a bank incorporated in India with branches in Singapore and, inter alia, branches in Jaipur and Bilwara, both of which are in India. By an agreement of sale and purchase dated 14 March 1985, the plaintiffs agreed to sell and Jagetia Paper Mills (P) Ltd (Jagetia) also of Jaipur, India agreed to buy 1095 metric tonnes of waste paper 'C & F any Indian port (ie Bombay, Bhavangan, Kandla)' at what was agreed between the parties to these proceedings to be the price of \$144,136.80. Jagetia undertook to pay by an irrevocable letter of credit to be received by the plaintiffs on or before 30 March 1985.

6 The plaintiffs eventually received the irrevocable letter of credit dated 4 June 1985 issued by the defendants' Jaipur branch upon the application of

Jagetia. The credit of \$197,100 was available by negotiation of the plaintiffs' drafts 180 days from the date of the bills of lading 'drawn on Jagetia'.

7 So far as they are material in these proceedings, the documents required by the letter of credit were (1) copy of the cable confirmation to Jagetia evidencing shipment and despatch particulars of the goods to enable Jagetia to arrange their own insurance; and, as required by the special conditions, (2) evidence that shipment had been made through a Conference line. A Conference line is understood to be a carrier by sea which runs a regular liner service and which is a member of an association of carriers plying between ports within a defined geographical region.

8 In early July, 1985 the plaintiffs shipped the consignment of waste paper by motor vessel 'Neptune' under two sets of original bills of lading. At or about the same time, the plaintiffs submitted their application form to their own bankers with instructions to negotiate the letter of credit. On 12 July 1985 the plaintiffs' bankers presented the bills of lading and other shipping documents to the defendants' branch in Singapore. The defendants' branch in Singapore noted that the plaintiffs had not submitted a copy of the plaintiffs' cable confirmation to Jagetia evidencing the shipment and despatch particulars of the goods. They also noted in their bills scrutiny sheets that there was no documentary evidence that motor vessel 'Neptune' was a Conference line vessel. The managing director of the plaintiffs, Ramdas s/o Nair (PW1), was informed of these discrepancies. He misunderstood the second discrepancy as requiring shipment by a container vessel, mistaking 'Conference' vessel for 'Container' vessel. In my view, nothing turned on this. The reason was this. By his written instructions given on behalf of the plaintiffs to the defendants' Singapore branch on or after 13 July 1985 and before 17 July 1985 the plaintiffs had instructed the defendants' Singapore branch to 'DHL (the shipping) documents on acceptance

basis`. In other words, he was relying on Jagetia`s acceptance of the two sets of documents and Jagetia`s instructions to the defendants` Jaipur branch, as the issuing bank, to accept the documents, even if they were short of the two documents I had mentioned earlier. I further found that the defendants` Singapore branch had neither accepted nor negotiated the plaintiffs` two sets of documents; and that at the highest they had negotiated the documents `on reserve`. What they did was despatching the two sets of documents to their Jaipur branch for `acceptance` by Jagetia. They asked their Jaipur counterpart to advise them of the due date for payment; this was something they would not have done if they had unconditionally accepted the documents. Further, they posted the nett proceeds in a margin account, which was a temporary or suspense account, and had not paid them to the plaintiffs, which they would have done if they had unconditionally accepted the documents for negotiation under the letter of credit.

9 The plaintiffs had not presented conforming documents. It was transparently clear as a matter of law that the defendants were not liable on their contactual engagement arising out of or under the letter of credit.

10 Nor was negligence a cause of action known to law. I was convinced that the law of negligence could not be extended to give cover to what was essentially a matter of contract or, in tort, a matter of conversion.

11 It was beyond dispute that the defendants` Bilwara branch in India had issued a bank guarantee dated 27 July 1985 at the request and in favour of Jagetia which presented the same to the carriers. The carriers delivered the goods to Jagetia on the strength of the guarantee, without requiring Jagetia to produce a set of the original bills of lading. Concurrently, the defendants` Jaipur branch was holding, and purported to hold, the documents as indicia of title for

the plaintiffs. By AB31 dated 29 July 1985 UCO Jaipur telexed UCO Singapore to say that they were holding the plaintiffs' shipping documents for the latter's disposal. At the same time, that branch stated that 'consignee (ie Jagetia) requests for delivery of B/L etc.' These two approaches were inconsistent: Jagetia, and the defendants ought to have known it, could not have had the cake and eaten it. There was no answer from the key witness of the defendants (DW2) as to why UCO Jaipur assisted Jagetia in getting at the goods without the bills of lading. In that transaction, I came to the conclusion that the defendants had knowingly assisted Jagetia in depriving the plaintiffs of their goods.

12 Jagetia's conduct was quite unwarranted and was wanting in good faith. By their letter D1 Jagetia asked the defendants' branch to stop delivery knowing full well that the carriers' agents had, at their request and against the said guarantee of the defendants, issued to them the delivery order. With the delivery order in hand, Jagetia could collect the goods at any time. By another letter D2 Jagetia claimed there were two discrepancies in the documents tendered under the letter of credit. Both D1 and D2 were dated 30 July 1985. On the evidence, I found that Jagetia took advantage of the situation and refused to pay the plaintiffs for the goods, relying on the discrepancies of the documents. They had use of the goods; they did not pay for them. They had not done so up to the trial of this action. Jagetia could not have done so without the assistance and bank guarantee of the defendants. In issuing the guarantee to the carriers the defendants acknowledged that they were converting the goods of the owners or a party entitled to possession thereof. I found that the defendants had intentionally dealt with the goods which was seriously inconsistent with the possession or right to immediate possession of the plaintiffs. To protect themselves they took an indemnity, in the usual way, from Jagetia. The plaintiffs were irreversibly deprived of their goods. I accordingly gave judgment and

applied the general rule that the damages were the value of the goods on the date of conversion. There was hardly any dispute about the value of the goods.

13 ***Plaintiffs' claim allowed.***

Lai Kew Chai J

Prabhakaran N Nair with Patrick Chong (Ong Tan Nair & Kwek) for
the plaintiffs
Eric Low (Khattar Wong & Partners) for the defendants
