

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1995] SGCA 23

CA 90/1994

Between

UCO Bank (formerly known
as United Commercial Bank)

... Appellant

And

Ringler Pte Ltd

... Respondent

GROUND OF DECISION

Tort — Conversion

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**UCO Bank (formerly known as United Commercial Bank) v
Ringler Pte Ltd**

[1995] SGCA 23

CA 90/1994

Goh Joon Seng J; Karthigesu JA; L P Thean JA

02 March 1995

- 1 The facts giving rise to this appeal are as follows.
- 2 The respondent is a company incorporated in Singapore and carrying on business as importer and exporter.
- 3 The appellant is a bank incorporated in India and registered in Singapore under the provisions of s 368(1) of the Companies Act.
- 4 Jagetia Paper Mills (Pte) Ltd (`Jagetia`) is a company incorporated in and existing under the laws of India.
- 5 On 14 March 1985, the respondent entered into a contract with Jagetia for the sale to Jagetia of 1,095 metric tons of waste paper at the price of S\$144,135.80 c Payment was to be by way of an irrevocable letter of credit.
- 6 On 4 June 1985, the appellant's Jaipur branch in India issued the irrevocable letter of credit No JPFR44/85 (`LC`) for the sum of S\$197,100 c Bombay. Credit was available by negotiation of the respondent's drafts drawn

on Jagetia 180 days from the date of the bills of lading. The documents required under the terms of the LC included the following:

(i) a copy of the cable confirmation to Jagetia evidencing shipment and despatch particulars. (This was to enable Jagetia to arrange insurance); (ii) evidence that shipment had been made through a conference line.

7 In early July 1985, the respondent shipped the consignment of waste paper (‘the goods’) by the vessel ‘Neptune’ under bills of lading No SPBM-B007 and SPBM-B015. It then submitted the documents to its own banker, DG Bank, with instructions to negotiate them on its behalf.

8 On 12 July 1985, DG Bank presented the documents to the appellant’s Singapore branch for negotiation. Some discrepancies were noted. There was no cable confirmation to Jagetia evidencing the shipment and despatch particulars of the goods and no documentary evidence that the ‘Neptune’ is a conference line vessel. At the respondent’s request the documents were despatched to the appellant’s Jaipur branch by courier on 17 July 1985 on an acceptance basis. The documents arrived at the appellant’s Jaipur branch on 25 July 1985.

9 Meanwhile on 18 July 1985, the appellant’s Bhilwara branch in India at Jagetia’s request issued a guarantee and indemnity (‘banker’s guarantee’) in favour of the carrier’s agents Samarth Shipping & Marine Co (Pte) Ltd (‘carrier’s agents’) agreeing to hold the carrier indemnified against any claim against it for delivering the goods to Jagetia without production of the bills of lading.

10 On 22 July 1985, the carrier's agent in India issued the delivery orders for the goods to Jagetia.

11 Further discrepancies were subsequently noted. On 27 July 1985 the documents tendered by DG Bank were not accepted. On 30 July 1985 the appellant's Jaipur branch informed the carrier's agent that the banker's guarantee was to be treated as withdrawn.

12 On 5 August 1985, the goods were released to Jagetia against the delivery orders issued by the carrier's agent. Jagetia, having taken delivery of the goods, refused to make payment to the respondent for the same.

13 The respondent then commenced proceedings against the appellant on 6 March 1986 for the sum of \$144,136.80 being the invoice value of the goods on grounds of breach of contract and/or negligence.

14 On its claim based on contract, the respondent contended that the appellant was precluded from asserting that the documents were not in accordance with the terms and conditions of the credit and accordingly the appellant should have made payment under the LC. On its claim based on negligence the respondent contended that the appellant owed it a duty of care not to issue the banker's guarantee which was utilised by Jagetia to take delivery of the goods without production of the original bills of lading.

15 In the course of the hearing in the court below the respondent was granted leave to amend its statement of claim to add a further cause of action against the appellant in conversion. On conversion the respondent alleged that the appellant was guilty of conversion by wrongfully assisting the carrier in the unlawful transfer of the goods to Jagetia.

16 On the claim based on contract, the learned trial judge found the documents to be non-conforming and that the appellants had neither negotiated nor accepted the documents. Therefore the appellant was not in breach of its contractual duties arising under the LC in refusing to make payment thereunder. The learned judge also held that the respondent could not succeed in negligence in what was essentially a matter of contract or conversion. He however allowed the respondent's amended claim on conversion. [See [1995] 1 SLR 389.] This was what the learned judge said (at p 392H):

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.

17 It is against this part of the judgment that the appeal was directed.

18 The popular definition of conversion is that found in 45 **Halsbury's Laws of England** (4th Ed) para 1422:

The essence of conversion. Conversion exists in three forms. To constitute the first form of 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. This inconsistency is the gist of the action. There need not be any knowledge on the part of the person sued that the goods belong to someone else; nor need there be any positive intention to challenge the true owner's rights. The action is not one in which fraud is a necessary ingredient. Goods may be the subject of successive and independent conversions by persons dealing with them in such a manner and with such an intention.

19 A second form of conversion is committed where goods are wrongfully detained by the defendant. A wrongful detention gave rise to an action for detinue before detinue was abolished and now gives rise to an action in conversion. The normal method of establishing a wrongful detention is to show that the plaintiff made a demand for the return of the goods and that the defendant refused after a reasonable time to comply with that demand. In many cases this form of conversion will coincide with the first.

20 The third form of conversion lies for loss or destruction of goods which a bailee has allowed to happen in breach of his duty to his bailor. This enables conversion to be brought in a case which would not have constituted conversion at common law, but which would have been detinue before detinue was abolished.

21 The only issue is whether the first form of conversion applies in this case. In order to constitute conversion, physical possession of the goods by the defendant is not a necessary element, nor is physical handling of the goods. What must be shown, however, is that the defendant's act deprives the plaintiff of his right to possession or amounts to a substantial interference with that right.

22 In the plaintiffs sent to the defendant an invoice for barley, which stated that the barley was bought by the defendant from the plaintiffs through one Grimmett as broker, and also a delivery order, which made the barley deliverable to the order of the consignor or consignee. The defendant had not in fact ordered any barley from the plaintiffs. Grimmett called on the defendant, who showed him the documents, and told him it was a mistake. Grimmett said that it was so, and asked the defendant to indorse the order to him, for the purpose, as he said of saving the expense of obtaining a fresh delivery order.

The defendant indorsed the order to Grimmett, who obtained delivery of the barley and disposed of it, and then absconded. On the trial of an action of trover for the barley, the jury found that the defendant had no intention of appropriating the barley to his own use, but indorsed the order for the purpose of correcting what he believed to be an error, and returning the barley to the plaintiffs. It was held that the defendant, having indorsed the order without any occasion to do so, and without authority, was liable. In giving his judgment Bramwell B said at p 89:

I think the plaintiffs are entitled to recover; though, so far as concerns the defendant, whose act was well meant, I regret the result. Mr Bosanquet gave a good description of what constitutes a conversion when he said that it is where a man does an unauthorised act which deprives another of his property permanently or for an indefinite time. The expression used in the declaration is ` **converted to his own use**;` but that does not mean that the defendant consumed the goods himself; for, if a man gave a quantity of another person's wine to a friend to drink, and the friend drank it, that would no doubt be as much a conversion of the wine as if he drank it himself. Now here the defendant did an act that was unauthorised. There was no occasion for him to do it; for the delivery order made the barley deliverable to the order of the consignor or consignee, and if the defendant had done nothing at all it would have been delivered to the plaintiffs. And there is no doubt that by what he did he deprived the plaintiffs of their property; because, by means of this order so indorsed, Grimmett got the barley and made away with it, leaving the plaintiffs without any remedy against the railway company, who had acted according to the instructions of the plaintiffs in delivering the barley to the order of the consignee. The case, therefore, stands thus: that by an unauthorised act on the part of the defendant, the plaintiffs have lost their barley, without any remedy except against Grimmett, and that is worthless. It seems to me therefore, that this was assuming a control over the disposition of these goods, and a causing them to be delivered to a person who deprived the plaintiffs of them. The conversion is therefore made out.

23 At p 92 Cleasby B agreed:

The ground of the decision in the present case is that the defendant had no title whatever to the goods - that there was no

necessity whatever for his interfering in any manner in the disposal of them, but that he improperly, though innocently - being prevailed upon to do so by Grimmett - having the indicia of title, by mistake, as he knew, transferred that title to the possession of Grimmett. I think a person who deals with the property in this way does so at his peril, and if by means of it a fraud upon the owner is accomplished, he is responsible.

24 In , without the indorsement by the defendant of the delivery order, the goods would not have been released by the railway authorities to Grimmett. In the present case, the appellant did not release the bills of lading to Jagetia to enable Jagetia to take delivery of the goods from the carrier. The carrier itself delivered the goods to Jagetia without the production of the bills of lading. In so doing the carrier was liable to the respondent for breach of contract as evidenced by the bills of lading or guilty of conversion. This liability to the respondent remained with or without the banker's guarantee. See . Therefore the appellant, in issuing the banker's guarantee, did not deal with the goods in a manner inconsistent with the respondent's rights either as owner or party entitled to possession.

25 Assistance may also be obtained from the decision of . In that case the plaintiff and one Matsushita were two of four co-owners of a yacht which had docked in Darwin. Following a dispute on board the yacht the plaintiff and Matsushita independently applied for a certificate of clearance without which the yacht could not leave Darwin. In contravention of s 122 of the Customs Act (1906-1968) the Darwin Customs authorities issued the clearance certificate to Matsushita although the latter had not obtained an export licence. This enabled him to sail away and he did so. Mason J held that the certificate of clearance was a declaration that the law of the port had been complied with and that the yacht was entitled to leave. But the issue of the certificate to Matsushita was not a dealing with the yacht in a manner inconsistent with the right of the plaintiff

as a co-owner, nor was it a denial of the plaintiff's rights as a co-owner, neither did it deliver possession of the yacht to Matsushita. Mason J's decision was affirmed by the High Court of Australia without adding **anything to his Honour's reasons**. In delivering his judgment Mason J at p 173 said:

The issue of the certificate enabled Matsushita to sail the yacht away without breaching s 118 but it did not give full possession of the yacht. Although the yacht was subject to the control of Customs it was not in the possession of Customs. The issue of the clearance did not operate as a delivery of possession of the yacht from the Customs to Matsushita. He and his companions already had possession. The plaintiff was subsequently excluded from possession but that was by act of Matsushita and his companions not by act of the Customs.

26 In our case, the delivery of the goods to Jagetia was effected by the carrier. However before delivery was effected, the carrier required the banker's guarantee. But the issuing of the banker's guarantee by itself did not operate as delivery of the goods to Jagetia. The banker's guarantee only entitled the carrier to indemnity against any claim by the respondent. It in no way affected the liability of the carrier toward the respondent for damages arising out of the delivery of the goods without production of the bills of lading. It is also to be noted that the banker's guarantee was issued by the appellant's Bhilwara branch in good faith some seven days before the documents arrived at the appellant's Jaipur branch on an acceptance basis and some nine days before it was advised by Jagetia that the documents were not accepted. Accordingly we are of the view that the appellant had not dealt with the goods in a manner which was inconsistent with the respondent's rights either as owner or party entitled to possession and no action thus lies against the appellant for conversion. Neither could the appellant be said to have been guilty of wrongfully assisting the carrier in the unlawful transfer of the goods to Jagetia. We therefore allow the appeal

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with costs here and below. The deposit by way of security for costs is to be released to the appellant.

27 ***Appeal allowed .***

Goh Joon Seng J
Karthigesu JA
L P Thean JA

Eric Low (Khattar Wong & Partners) for the appellant
Prabhakaran Nair and Patrick Chong (Ong, Tan, Nair & Quek) for
the respondent
