IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 145

Suit 1769/1994, RA 17/1995

Between

Olivine Electronics Pte Ltd

… Plaintiff

And

Seabridge Transport Pte Ltd

… Defendant

GROUNDS OF DECISION

Admiralty and Shipping — Bills of lading — Bills of lading as document of title

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

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Olivine Electronics Pte Ltd v Seabridge Transport Pte Ltd

[1995] SGHC 145

Suit 1769/1994, RA 17/1995
Goh Joon Seng J
09 June 1995

1 The plaintiffs are a company incorporated in Singapore and are engaged inter alia in the export of colour television sets.

2 The defendants are a company incorporated in Singapore and are engaged in the business of forwarding, packing, crating and shipping agency services.

3 In or about March 1994, the plaintiffs agreed to sell 320 colour television sets (the cargo) to Orient Plus (Khabarovsk) Pte Ltd (Orient Plus) 680009 Khabarovsk Prospect, 60 Letia Oktiabria D-24 Russia, for US$85,780.00 (the contract of sale).

4 Pursuant to the contract of sale, the plaintiffs entered into a contract of carriage of the cargo from Singapore to Vostochny, Russia. The contract of carriage is contained in and evidenced by bill of lading No W6930472 (the bill of lading).

5 On or about 30 March 1994, the defendants shipped the cargo on board the vessel `Leeward` and issued the bill of lading acknowledging receipt of the two containers containing the cargo.

6 It was stated in the bill of lading that the plaintiffs were the shipper and Orient Plus the consignee and the notify party. The bill of lading also stated `In witness whereof one (1) original bill of lading has been signed if not otherwise stated above, the same being accomplished the other(s), if any, to be void. If required by the carrier one (1) original bill of lading must be surrendered duly endorsed in exchange for the goods or delivery order.`

7 On the arrival of the cargo at Vostochny, it was delivered by the defendants or their servants or agents to Orient Plus on 19 April 1994 without production of the bill of lading. The plaintiffs have not received payment in respect of the cargo.

8 On 3 November 1994, the plaintiffs commenced these proceedings. On 23 November 1994, the plaintiffs applied for judgment under O 14 of the Rules of the Supreme Court 1990. On 6 January 1995, the assistant registrar granted the defendants leave to defend on condition that they furnish a bank guarantee for US$80,000 within 21 days with costs in the cause. Against that order both the plaintiffs and defendants appealed. Both appeals came before me on 18 April 1995. I dismissed the appeals with costs reserved to the trial judge. I extended the time for furnishing the bank guarantee to 21 days from the date of my order. The defendants have appealed against my order dismissing their appeal. I now give my reasons.

9 It was the plaintiffs` case that in releasing the cargo without production of the bill of lading which remained in the possession of the plaintiffs, the

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defendants were in breach of the contract of carriage implied and or express. In the alternative the plaintiffs contended that the defendants were liable to them for conversion.

10 The defendants, on the other hand, contended that as the bill of lading was made out to a named consignee, Orient Plus, it was not a document of title. Consequently, the delivery of the cargo to the named consignee without production of the bill of lading which was in accordance with the practice and custom of the port of Vostochny, was not a breach of contract nor would it render them liable for conversion.

11 **Implied term**

12 In the case where the bill of lading is made out ` ***to order*** ` the law is clear. If the carrier releases the goods not against production of the bill of lading, the carrier is liable for breach of contract and for conversion. See ***Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd*** where at p 586 Lord Denning, in delivering the judgment of the Privy Council, said:

> *It is perfectly clear law that a shipowner who delivers without production of the bill of lading does so at his peril. The contract is to deliver, on production of the bill of lading, to the person entitled under the bill of lading. In this case it was `unto order or his or their assigns,` that is to say, to the order of the Rambler Cycle Co, if they had not assigned the bill of lading, or to their assigns, if they had.*

13 The defendants contended that whilst the ***Rambler Cycle*** case1 might be the law on bills of lading made out ` ***to order*** ` or ` ***to bearer*** `, it did not apply to a straight consigned bill which is one with a named consignee. They relied on Benjamin`s ***Sale of Goods*** (4th Ed) p 925 para 18-010 which reads:

> *A straight consigned bill is one that makes the goods deliverable to a named consignee and either contains no words importing*

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> *transferability or contains words negativing transferability (such as `not transferable` or, somewhat inaccurately, `not negotiable`). Sea waybills are documents of this kind.*

14 Two things follow from the fact that a document of this kind is not transferable. First, the consignee (if in possession of the document) cannot, by purporting to transfer it, impose on the carrier a legal obligation to deliver the goods to another person. Secondly, the shipper cannot oblige the carrier to deliver the goods to a different consignee from the one named merely by altering the bill of lading; for under a straight consigned bill the carrier is entitled and bound to deliver the goods to the originally named consignee without production of the bill, ...

15 For this proposition of law, ***Benjamin*** cites no authority in support. On the other hand, Schmitthoff`s ***Export Trade*** (9th Ed) at p 572 states:

> *In the modern bill of lading a box on the left-hand corner of the bill usually provides: `Consignee (if `order` state notify party)`*

16 If the shipper intends to obtain a negotiable bill he completes this box by inserting `order` and adding as `notify party` the name of the consignee.

17 A shipper who wishes to obtain a bill of lading which is not negotiable does not insert the word `order` in the appropriate box of the bill but inserts the name of the consignee in the following box.

18 Then at p 593 it states:

> *Logically the function of the bill of lading as a document of title is distinct from its quality as a negotiable instrument. Even a bill of lading which is not made negotiable, operates as a document of title because the consignee named therein can only claim delivery of the goods from the shipowner if able to produce the bill of lading.*

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19 Whilst no authority is cited by ***Schmitthoff*** for this proposition of law, there is the dicta of Hill J in ***Evans & Reid v Cornouaille*** at p 77:

> *In this case the plaintiffs shipped at Cardiff a cargo of coal on board the French steamship Cornouaille, under a bill of lading for delivery at Nantes to the plaintiffs` order. The plaintiffs shipped the coal under a contract of sale entered into with the Cie Charbonniere d`Armement et Transbordement Maritimes, of Paris, the terms of sale being a price f o b, cash against documents. The documents were presented to the buyers, and were not taken up. The bill of lading was still in the hands of the plaintiffs, in whom the property in the coal remained. In this state of circumstances, the defendants` agents at Nantes and the Master of the ship delivered the coal to the SociÃ©tÃ© Union CharbonniÃ¨re et Metallurgique, taking a receipt upon the Master`s copy of the bill of lading, and obtaining from the SociÃ©tÃ© Union payment of the freight.*
>
> *...*
>
> ***The fact that the coal was intended to be delivered to the SociÃ©tÃ© Union did not entitle the Master to deliver to anybody without production of the bill of lading. It would not have entitled him to deliver even if the SociÃ©tÃ© Union had been the consignees named in the bill of lading****. It is said that the plaintiffs ought to have informed the defendants that the buyers of the coal had not taken up the documents. There is no such duty upon the plaintiffs. The transaction between the buyers and the plaintiffs had nothing to do with the shipowners. The latter were only concerned with the fulfilment of their bill of lading contract, and the plaintiffs were entitled to rely upon this, that the ship would not give delivery of the goods until the bill of lading, with the plaintiffs` endorsement upon it, was presented to the Master. [Emphasis added.]*

20 The dicta in italics clearly support the view taken by ***Schmitthoff*** . But it is obiter as the bill of lading there was made out to the plaintiffs` order.

21 Scrutton LJ in ***Thrige v United Shipping Co Ltd*** left the position open. There the plaintiff, a Danish manufacturer, sold machinery to an English company. The plaintiff shipped the machinery in vessels belonging to a Danish shipping company which issued the bills of lading made out to the English buyer as consignee. By the bills of lading the machinery was to be carried from

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Esbjerg to Harwich and then forwarded to London by rail to be delivered to the consignee upon production of the bills of lading. But upon the arrival of the machinery in London the defendants as agents of the shipping company caused the same to be delivered to the consignee without production of the bills of lading. The plaintiff did not receive payment for the machinery from the consignee. The plaintiff sued the defendants and obtained judgment. The defendants appealed. The appeal was allowed by the Court of Appeal principally on the ground that the defendants as agents of the shipping company were under no duty to the plaintiff in respect of the machinery consigned. At p 9 Scrutton LJ said:

> *Neither is there conversion; nor is there any duty owed by the agent to the vendor who has contracted with the shipowner and not with his agent.*

22 That renders it unnecessary to decide the question which I personally feel considerable interest in, ie as to whether, when a bill of lading is made out to a consignee and the property passes on shipment, the shipowner who delivers to the named consignee without production of the bill of lading is or is not guilty of any breach of contract. It is not necessary to decide it; ... .

23 **Express term**

24 On the express term of the bill of lading, the defendants relied on the stipulation: `If required by the carrier one (1) original bill of lading must be surrendered duly endorsed in exchange for the goods or delivery order.`

25 It was contended on their behalf that this did not impose an obligation on them to take up the original bill of lading before delivery. Counsel for the defendants referred to ***Chilewich Partners v MV Alligator Fortune & Ors*** . In that suit before the United States District Court of Southern District of New

York, Chilewich sued six carriers for delivery of 12 shipments of cattlehides to their buyers Kyong II in Korea without production of the bills of lading made out ` ***to the order of shipper*** ` with Kyong II as ` ***notify party*** `. Among the defendants were Kawasaki Kisen Kaisha Ltd [K-Line], Nippon Yusen Kaisha Ltd [NYK-Line] and Westwood Shipping Lines Inc [Westwood]. K-Line`s and NYK-Line`s bills of lading contained the clause reading:

> *If required by the Ocean Carrier, this bill of lading duly endorsed must be surrendered in exchange for the goods or delivery order.*

26 Westwood`s bill of lading had a similar clause reading:

> *... if required by the carrier one signed bill of lading properly endorsed must be surrendered by the agent of the vessel at the port of discharge in exchange for delivery order.*

27 Chilewich`s claims were dismissed. In the course of his judgment, Tenney DJ said at p 319:

> *It is apparent from the provisions of the bills of lading themselves that ... the contracts between Chilewich and the defendant carriers did not impose an independent obligation on the carriers to take up an original endorsed bill of lading before delivering the hides to Kyong II ...*

28 I found ***Chilewich*** `s case4 of no assistance because the shipments there were made under ` ***stale*** ` bills of lading with ` ***mill delivery*** ` terms and the delivery made under the United States Pomerene Bills of Lading Act. At p 321 Tenney DJ amplified:

> *The sales contracts between Chilewich and Kyong II covering the shipments in suit called for a `stale` bill of lading transaction with `mill delivery` terms. In a stale bill of lading/mill delivery transaction, the hides were typically delivered to Kyong II`s `mill`, or government bonded warehouse, before Kyong II succeeded in opening letters of credit. In most cases, the hides arrived in Korea and were transported to Kyong II`s warehouses while Chilewich retained the original bills of lading. By directing the carriers to effect `mill delivery` while retaining possession of the original bills of lading, Chilewich ensured that the hides were*

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> *delivered to Kyong II`s bonded warehouse before Kyong II came into possession of an original bill of lading for the hides.*

29 Chilewich held the carriers responsible for delivering the hides to Kyong II`s bonded warehouses. Tr at 94-95. When some of the carriers hesitated to deliver the hides without presentation of the original bills of lading or a bank guarantee, Chilewich urged them to do so. This is true even though Chilewich knew that Kyong II did not possess original, endorsed bills of lading - because the bills were still in Chilewich`s possession. The court agrees with Chilewich`s claim that, as holders of the original bills of lading, they were the rightful owners of the hides at the time of the events in this suit. However, this claim is not alone sufficient to establish the carriers` liability for misdelivery - especially when, as here, the carriers delivered the hides to a party not in possession of the original bills at the insistence of the bill holder.

30 There is nothing in the Pomerene Act 49 USC s 81 et seq that disturbs the court`s conclusion that the carriers were not obligated to take up original bills of lading before delivering the hides. 49 USC s 89, entitled `Delivery; when justified` states:

> *`A carrier is justified ... in delivering goods to one who is - (a) a person lawfully entitled to the possession of the goods, or (b) the consignee named in a straight bill for the goods, or (c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee; or by the mediate or immediate indorsee of the consignee.`*

31 Even if the provision `if required by the carrier one (1) original bill of lading must be surrendered` gave the defendants the option of not requiring the surrender of the bill of lading in exchange for the cargo, this would be inconsistent with the preceding provision reading `In witness whereof, where one (1) original bill of lading has been signed if not otherwise stated, the same

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being accomplished, the others, if any, to be void.` This preceding provision called for delivery of the cargo against presentation of the original bill of lading.

32 In ***The Sormovskiy 3068*** , the bill of lading contained the following clause:

> *In witness whereof the Master or Agent of the said vessel has signed the number of bills of lading indicated below all of this tenor and date any one of which being accomplished the others shall be void.*

33 On the meaning of `accomplished`, Clark J at p 272 said:

> *None of those cases is in my judgment inconsistent with the plaintiffs` case, namely, that subject to the terms of the particular contract and save in exceptional circumstances a shipowner must not deliver the goods otherwise than against presentation of an original bill of lading. That seems to me to be implicit in the express provision quoted above that any one of the bills of lading being accomplished the others to stand void. In my judgment it is implicit in that provision that, save perhaps in exceptional circumstances, one would expect one of the bills of lading to be `accomplished` by being presented to the master or shipowner.*

34 If there is conflict between these two provisions of the bill of lading, the court will have to apply the contra proferentum rule and construe it against the defendants who issued the bill of lading.

35 On the defendants` defence that it is the custom and practice of the port of Vostochny for cargoes to be delivered without production of the original bill of lading, as to what constitutes custom and practice to take it out of the normal requirement of the law that delivery must be made against production of the original bill of lading, Clark J at p 275 of ***The Sormovskiy 3068*** said:

> ***Custom***
>
> *Equally, if there were a custom of the port of Vyborg that cargo was always delivered to the CSP [Commercial Sea Port] at Vyborg as the agent of the person entitled to possession without the*

> *production of an original bill of lading, delivery to the CSP would probably amount to performance of the defendants` obligations under the contract of carriage. However, custom in this context means custom in its strict sense; that is it must be reasonable, certain, consistent with the contract, universally acquiesced in and not contrary to law: see* ***Scrutton on Charterparties*** *at pp 14-16.*
>
> ***Practice***
>
> *Practice must in my judgment be distinguished from custom. A vessel may be discharged by any method which is consistent with the practice in the port: see* ***Carver on Carriage by Sea*** *(13th Ed) Vol 2 para 1542. It would not, however, in my judgment be good performance of the defendants` obligations under the contract if it were merely the practice for vessels to deliver goods to the CSP without presentation of a bill of lading in circumstances where neither the law nor custom (in its strict sense) required it.*

36 There is no evidence other than the bare statement in the affidavit of the defendants` export manager before me that it is the custom and practice of the port of Vostochny for cargoes to be delivered without production of the original bills of lading. But the law on the duty on the part of the carrier to deliver only against production of the original bill of lading in a straight consigned bill of lading is still somewhat open, though the dicta of Hill J in the ***Cornouaille*** case2 supports the plaintiffs` claim. Accordingly, I dismissed both appeals and affirmed the order of the assistant registrar`s granting conditional leave to defend with costs reserved.

37 ***Appeals dismissed.***

Goh Joon Seng J

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Loo Dip Seng (Ang & Pnrs) for the defendants

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