IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 58

DCA No 47/1994

Between

Showa Leasing (Singapore) Pte Ltd

… *Plaintiff*

And

Dodwell Singpore Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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Showa Leasing (Singapore) Pte Ltd v Dodwell Singpore Pte Ltd

[1995] SGHC 58

DCA No 47/1994
Lai Siu Chiu J
28 February 1995

1 **Judgment:**

2 Coram: Lai Siu Chiu J

3 **GROUNDS OF JUDGMENT**

4 The background

5 The appellants (Showa) are a leasing and factoring company, Alliance Apparel Pte Ltd (Alliance) were at the material time garment manufacturers and the respondents Dodwell Singapore Pte Ltd (Dodwell) were a customer of Alliance. By a factoring agreement dated 29 July 1987 (the agreement) made between Showa and Alliance the latter assigned to Showa all their present and future debts and receivables under their credit sales. Notice of the assignment was given to Dodwell by a letter from Alliance dated 12 August 1987 (the letter) which copy Dodwell duly acknowledged and thereby agreed to direct to Showa all future payments due to Alliance, Dodwell purchased garments from Alliance under invoice No AA/E/037/90 (the invoice) in the amount of $33,640 (the

sum). Dodwell paid Alliance instead of Showa, the sum together with another $17,703.20 on invoice No AA/E/036/90 (the other invoice).

6 Subsequently Showa as debenture holders put Alliance into receivership (on 11 July 1991).

7 Showa through their solicitors demanded payment from Dodwell on the invoice, Dodwell refused and through their solicitors contended that the invoice was not stamped with any assignment clause as which result Dodwell made payment to Alliance; they suggested that Showa seek recourse from Alliance. Showa issued the above summons to recover payment from Dodwell who raised the following points in their defence:

8 1. the agreement only assigned to Showa the then present and future debts and receivables under the credit sales of Alliance but not the future debts; at best there was only a purported assignment of future debts;

9 2. there was no notice on the invoice or on the other invoice directing that payment was to be made to Showa, neither was there any notice of the assignment to Dodwell from Showa or Alliance from the date of the invoice (14 June 1990) to the date of payment (25 June 1990);

10 3. Dodwell having made full payment on the invoice they are discharged from the debt and are not liable to Showa.

11 In their reply Showa contended:

12 a. by acknowledging the letter Dodwell agreed to make payment to Showa of all present and future debts owed to Alliance and further agreed that only payment to Showa would constitute a proper discharge of their debts;

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13 b. therefore Dodwell breached the agreement and remained liable to pay Showa in making payment to Alliance on the invoice.

14 The learned district judge who heard the claim dismissed Showa's action. In his grounds of decision he said

15 a. there was evidence that not all the invoices of Alliance were assigned to Showa;

16 b. there was also evidence that Dodwell on another occasion made payment direct to Showa when there was no Showa legend on the invoice;

17 c. in the absence of the Showa stamp on the invoice Dodwell acted reasonably in paying direct to Alliance;

18 d. the letter requiring Dodwell to make payment to Showa regardless of whether aninvoice was stamped with the Showa legend was inconsistent with Showa's evidence that not all Alliance's invoices were assigned to Showa;

19 e. the law requires Showa to give clear notice of the assignment, Dodwell had no notice that the invoice was also assigned to Showa.

20 Showa appealed against the district court's decision. Upon hearing the appeal I allowed it, awarded judgment to Showa on their claim and made the usual consequential orders. Dodwell has appealed against my decision.

21 The appeal

22 Counsel for Showa submitted that the decision of the district judge could not be sustained on the evidence and on the law for the following reasons:

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23 1. he failed to explain what he meant by `clear notice' of the assignment having to be given to Dodwell that the debt had been assigned, relying on William Brandt's Sons v Dunlop Rubber Co < 1904-07 > AER 345. The principle in that case is that a valid equitable assignment need not on the face of it purport to be an assignment nor be in the language of an assignment so long as the debtor understands that the debt has been made over by the creditor to a third party. It is equally clear that notice of an assignment need not be formal, any kind of notice will suffice so long as the fact that assignment has taken place is brought to the notice of the debtor; even oral notice will suffic (Chitty on Contracts 26 ed Vol 1 p 894 para 1426);

24 2. he failed to appreciate that the efficacy of an equitable assignment is not affected by absence of notice to the debtor unlike a legal assignment, unless there are competing interests;

25 3. he erred when he failed to give due consideration to the evidence adduced by Showa that there was a running account between Dodwell and Alliance in which all the invoices were factored to Showa. Regardless of whether the invoices were or were not stamped with the Showa legend the letter made it clear that only payment to Showa would constitute a proper discharge of the debts;

26 4. he failed to note that Dodwell cannot claim they had no notice of the assignment as up to 8 May 1990, they had been making payment to Showa;

27 5. he erred in failing to consider Dodwell's own evidence that there was only one other invoice namely the other invoice (see AB110) that was not assigned to Showa.

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28 I refer next to the evidence. In the affidavit evidence in chief filed on Dodwell's behalf by the accountant of Inchcape (Angeline Ng), she

29 (i) admitted that Dodwell did receive and acknowledge the letter and that notice of the assignment would be brought to Dodwell's attention by a marking on the invoices sent (which presumably meant the Showa stamp);

30 (ii) said subsequent to the letter numerous invoices were issued by Alliance to Dodwell endorsed with the Showa stamp and payments were effected direct thereon to Showa;

31 (iii)said Dodwell paid Alliance and not Showa on both the invoice and the other invoice because there was no Showa stamp on either invoice.

32 When cross-examined (N/E 7), Angeline Ng (DW1) had agreed that the direction in the letter required payment to be made to Showa regardless of whether there was/was not a Showa stamp on the invoices. She said she was employed by Inchcape in November 1992 and therefore she did not know whether Dodwell had made payment to Showa previously on invoices which did not have the Showa stamp. Evidence had been adduced from Showa's assistant credit manager Dora Tang (N/E 4-5) that 2 invoices (AB27 & 36) issued in February and June 1988 as well as other invoices had been paid without question by Dodwell notwithstanding that no Showa stamp was endorsed on them.

33 At the appeal, counsel for Showa identified (from the 100 which had been factored to her client) 7 invoices on which Showa received payment from Dodwell although the same did not have her client's stamp; Showa received 99 payments altogether from Dodwell. In choosing to pay Alliance on the invoice

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Dodwell did so at their peril. She pointed out that the trial judge had clearly misdirected himself when he said that not all the invoices of Alliance had been factored to Showa; the documents produced (AB124-376) showed clearly that all invoices were factored save for the other invoice which was issued on the same date as the invoice and not earlier, as he seemed to think.

34 Another point canvassed at the appeal was as to the type of factoring agreement Showa had with Alliance. In the court below, counsel for Showa had agreed with her opponent's submission that the agreement was a facultative and not a whole turnover type of factoring arrangement. At the appeal, she submitted that the agreement, whether a facultative or a turnover arrangement, operated effectively as a whole turnover type because cl 9 of the agreement states that all sales would be approved credit sales until notification to the contrary is given to Alliance (see the definitions by Freddy R Salinger in Factoring Law and Practice at paras 7-12 and 7-13). Clause 9 (1) states:

35 The Client shall submit to the Factor in advance the full name and address of any Customer and all such information with regard to such Customer and its business with the Client as the Factor may request....The Factor will then inform the Client if such Customer is approved, the credit limit and any other terms and conditions the Factor considers necessary. Unless and until the foregoing approval has been withdrawn, all credit sales by the Client to such Customer from the date of the Factor's approval and within the amount of the credit limit and in compliance with the other terms and conditions (if any) imposed by the Factor will be Approved Credit Sales, the Factor shall be obliged to accept the same when offered, provided always that the offer is made in accordance with clause 2 above....

36 The decision

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37 I agreed with counsel for Showa that the trial judge had clearly misdirected himself on the evidence; his findings as set out in a) c) d) and e) above could not be sustained on the evidence or the law and his decision contradicted his finding b).

38 The law does not require that an equitable assignment must be in any particular form or wording so long as the intention of the parties is clear and value is given. In his skeleton arguments tendered for the appeal, counsel for Dodwell stated that Showa had given valuable consideration for the invoice, thereby effectively abandoning para 3 of the defence where it was pleaded that 'at best there was only a purported assignment of future debts'. Indeed an equitable assignment need not be in writing (see Salinger (supra) at para 7-06) although it is desirable since until he receives it, the debtor is entitled to pay the original creditor (Chitty (supra) para 1401 p 872).

39 Counsel for Dodwell had informed the court at the outset that he did not dispute the terms of the assignment. It bears remembering that Dodwell's witness had admitted that the company not only acknowledged the letter but had acted on it in effecting (99) payments to Showa on Alliance's invoices, even without the Showa stamp (according to Showa's witness Dora Tang < PW1 >). It therefore did not lie in Dodwell's mouth to say (as their counsel sought to do) that the letter was a revocable mandate when, notice was given to Dodwell of, and they had acted previously on, the assignment and their counsel had conceded that Showa provided value for the invoice. I found counsel's argument (referring to the 7 invoices paid by his client without Showa's stamp endorsed thereon) that seven (7) wrongs did not make the eighth right equally lame.

40 The evidence (oral and documentary) clearly established that Dodwell had a running account with Alliance and all invoices relating thereto were

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factored to Showa. I agreed with Showa's counsel that Dodwell paid Alliance at their peril on the invoice when Showa had not notified Dodwell that the invoice was not factored. It seemed to me that arguments concerning the type of factoring arrangement in this case were irrelevant in view of my finding that Showa had provided valuable consideration for the invoice and I had also rejected the argument of counsel that the (facultative) agreement cannot cover an assignment of future debts (in June 1990) but only those that arose upon signing of the agreement.

Lai Siu Chiu J

Tan May Tee (Wendy Wong Koh & Suparto) for the appellants
Godwin Campos (Rodyk & Davidson) for the respondents

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