IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1996] SGCA 10

CA 99/1995

Between

City Securities Pte Ltd (in liquidation)

… *Appellant*

And

Associated Management Services Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Contract — Breach; Financial and Securities Markets — Securities — Trading

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

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City Securities Pte Ltd (in liquidation) v Associated Management Services Pte Ltd

[1996] SGCA 10

CA 99/1995
Karthigesu JA; L P Thean JA; Yong Pung How CJ
11 March 1996

1 This is an appeal against the decision of the judge-in-chambers allowing the appeal of the respondents against the decision of the assistant registrar in which the latter assessed damages for breach of contract in the sum of S$2,453,094.90 to be paid by the respondents. The learned judge held that damages should have been assessed as nil. At the conclusion of the hearing of the appeal, we allowed it and gave judgment to the appellants in the sum of $1,012,000 with interest and costs. We now give our reasons.

2 ***The facts***

3 The brief facts were these. The appellants were a company of stockbrokers, and the respondents were the appellants` clients. By a contract made on 24 January 1986, as evidenced by a debit note of that date, the appellants bought 880,000 shares in Malayan Tin Printing Co. Ltd (MTP) `by order and for account` of the respondents on a `ready` basis at $3.75 per share for a total sum of $3,336,400, inclusive of brokerage and stamp fees. We shall refer to this as the `second contract`, as there was an earlier contract made by the appellants relating to MTP shares which we shall relate in a moment. The

second contract was made subject to the bye-laws of the Stock Exchange of Singapore Ltd (the Stock Exchange bye-laws). Pursuant to bye-law 4.4, `ready bargains for ready delivery shall be due on the same day in the week following the date of transaction`. The due date for fulfilment of the second contract, therefore, was 31 January 1986. However, on the due date, the respondents failed to pay the total sum due under the contract. The price on the open market at that time for MTP shares was $2.60 per share.

4 About six months before the second contract was made, that is, on or about 19 July 1985, the appellants entered into a contract with Prima Ltd (Prima) to buy from them one million MTP shares at the price of $3.60 per share (Prima contract). Payment and delivery was to be on 18 January 1986; however, the appellants were not able to pay and take delivery of the shares and an extension of time was granted by Prima to 21 April 1986. Notwithstanding the extension of time, the appellants were still unable to pay and take delivery of the shares from Prima. In the end, Prima commenced an action against the appellants claiming damages based on the difference between the contractual price of $3.60 per share and the then prevailing market price of $1.09 per share with interest, amounting to a total of $2,561,665.18. However, by reason of the liquidation of the appellants, the action was discontinued and Prima proved the amount due in the liquidation of the appellants.

5 The appellants did not take any action against the respondents until more than two years later. On 14 July 1988, they commenced the present action against the respondents claiming the total sum of $3,336,400. After another period of long delay, the appellants on 28 February 1994, on an application for summary judgment under O 14 before an assistant registrar, obtained an interlocutory judgment against the respondents with damages to be assessed.

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Against the decision of the assistant registrar the respondents appealed to a judge-in-chambers. The appeal was heard before Judith Prakash JC (as she then was), and she affirmed the decision below, save for the order as to costs which she varied. There was no appeal against her decision.

6 Eventually the assessment of damages came before an assistant registrar. The respondents did not deny the existence of the second contract and the failure on their part to pay. Their position was that the appellants did not inform them that the appellants were acting as principals in the transaction, and not as agents. More importantly, the respondents did not know of the prior transaction between the appellants and Prima. In any case, the appellants did not have any MTP shares to deliver at all. For these reasons, it was submitted on their behalf that no loss was suffered by the appellants. On the other hand, the appellants contended that it did not matter where the appellants intended to purchase the MTP shares to fulfil the second contract with the respondents. The loss they had sustained was the difference between the contract price and the market price for the MTP shares on the due date under the second contract.

7 ***Decision of assistant registrar***

8 The learned assistant registrar found that the appellants acted as principals and not as agents in entering into the second contract with the respondents, and that the respondents knew that the appellants were acting as principals. He said:

> *I find that, on a balance of probabilities, there was a private agreement for the plaintiffs to sell 880,000 MTP shares to the defendants. This agreement took place some time prior to January 1986 when the price of MTP shares were [sic] still in the region of $3.75 (before the price of MTP shares fell to $2.60). …*

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9 Furthermore, the evidence shows that on 12 July 1989, the defendants wrote to the plaintiffs asking them to confirm that there was a contract between the defendants and City Securities for the sale of 880,000 MTP shares. There was no doubt in the mind of the defendants that the plaintiffs were the sellers of the shares. ... On that same day (14 July 1989) the defendants sent a letter to the Stock Exchange of Singapore, stating that they had bought 880,000 MTP shares from the plaintiffs but had not paid for them yet and were negotiating an amicable settlement. This is hardly the reaction of a person who has only just discovered that his agent has been secretly dealing with him as a principal. I am sure that the defendants knew well before 14 July 1989 that they were contracting to buy shares belonging to the plaintiffs.

10 The learned assistant registrar also found that the respondents knew of the Prima contract, and he held that the amount which the appellants had to pay to Prima was a direct and foreseeable consequence of the breach by the respondents of the second contract. He allowed the appellants the sum of $2,254,265.36. This sum represented the amount of the loss attributed to 880,000 MTP shares out of the one million MTP shares which the appellants had purchased under the Prima contract. In addition, he allowed a further sum of $198,829.54 to the appellants for loss of profits. This was derived by taking the difference between the total price due under the second contract which was $3,336,400 and a sum representing the proportionate amount agreed to be paid by the appellants to Prima for 880,000 of the MTP shares, which was $3,137,570.46.

11 ***Decision of the judge***

12 On appeal, the learned judge considered the question whether there was a nexus between the sale of 880,000 MTP shares by the appellants to the respondents and the sale of the one million MTP shares by Prima to the appellants to be the key issue. [See [1995] 3 SLR 495 .] He said:

> *There is here a case where the plaintiffs, for reasons not explained, have said nothing at all about how they had come to buy the 1 m MTP shares ... If the shares, or some of them, were for the defendants` account, they have not explained why they had bought one million shares when only 880,000 shares were required by the defendants. The plaintiffs` case, as put by the liquidator, is that the plaintiffs had first bought the shares and later found a buyer in the defendants. If that is the case, they have failed to demonstrate how they are entitled to charge the defendants for their own loss. On the other hand, if it is their case that they acted on the defendants` behalf, they have failed to explain why they should have bought shares in July 1985 when they did not contract to sell to the defendants until January 1986. They are singularly vague on the dates when the purchase and the sale took place. If the sale to the defendants was 24 January 1986, as shown in the debit note, they have also not explained why the defendants should have bought them at the price of $3.75 a share when the market price at that time was only $2.60.*

13 So there were big gaps in the plaintiffs` case ... .

14 He later continued:

> *... at the end of the day, what we have, simply, is a case where the plaintiffs have put forward a claim which they have made no credible effort to sustain. What little they have said in regard to the basis of their claim makes no sense. The defendants` evidence is of no help to the plaintiffs. The plaintiffs have simply failed to discharge the burden, which lies on them, of showing how their loss should be charged to the defendants. I think defence counsel is quite correct when he says that the damages ought to have been assessed as nil.*

15 The learned judge then concluded thus:

> *The defendants therefore succeed in their appeal. The damages should have been assessed as nil. The view which I have come*

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> *to must lead to the conclusion that the plaintiffs should not have commenced the action in the first place. It would follow also that the defendants should have their costs of the entire action, including the costs of the order 14 proceedings and the costs of the assessment of damages, as well as the costs of this appeal. Any order for costs previously made against the defendants which is inconsistent with this should be set aside. I order accordingly.*

16 ***The appeal***

17 On appeal, counsel for the appellants raised two grounds of appeal. First, he contended that the learned judge wrongly considered the issue of liability. The question of liability had been settled by the decision of Judith Prakash JC and there had been no appeal against that decision, and the learned judge should not have reopened that issue. Secondly, he contended that the amount of damages should not have been reduced to nil.

18 The first contention was misconceived. The matter in issue before the learned judge was the assessment of damages made by the learned assistant registrar. The latter`s assessment hinged on the nexus between the Prima contract and the second contract. He awarded damages on the basis that the appellants` breach of the transaction with Prima was a `direct` and `foreseeable` consequence of the respondents` breach of the second contract. He said:

> *The plaintiffs admitted Prima`s proof of debt for $2,254,265.36 in respect of 880,000 MTP shares. This was as a direct consequence of the defendants` breach of their contract with the plaintiffs. The defendants knew that the plaintiffs had contracted to buy the shares from Prima to fulfil their obligation to the defendants. It was foreseeable that by breaching their contract with the plaintiffs, the defendants would cause the plaintiffs to in turn breach their contract with Prima. There was no evidence that the liquidator had acted unreasonably in admitting Prima`s proof of debt. I allowed the plaintiffs` claim for consequential damages of $2,254,265.36 in full.*

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19 Additionally the plaintiffs had suffered loss of profit. If the defendants had not breached their contract with the plaintiffs, the plaintiffs would have received $3,336,400 (inclusive of brokerage fees) from the defendants for 880,000 MTP shares and in turn would have had to pay $3,137,570.46 (pro rated from the sum they would have had to pay for 1 million MTP shares) to Prima for the shares. The loss of profit was, therefore, $3,336,400 less $3,317,570.46 which works out to $198,829.54.

20 The learned judge did not agree with such determination made by the learned assistant registrar. He found that there was no nexus between the two transactions, and there was no sustainable claim for the basis of assessment adopted by the learned assistant registrar, and no damages should be awarded on that basis. That was why he held that the `damages should have been assessed as nil`. He did not reopen the question of liability.

21 In our opinion, the appellants` breach of the Prima contract could not be attributed to and was not occasioned by the breach of the second contract on the part of the respondents. The Prima contract was made well before the second contract was made with the respondents; the appellants had bought the one million MTP shares from Prima about 6 months prior to the second contract. It is true, as the learned assistant registrar found, that at the time of the second contract, the respondents knew that the appellants had contracted to buy the one million MTP shares from Prima. But the real point was that the appellants did not enter into the Prima contract to fulfil their obligations under the second contract. At the time of the second contract, the Prima contract had already been made and the appellants had already failed to pay and take delivery of the one million MTP shares on the due date and an extension of time was then granted by Prima. There was no sufficient evidence to show that having obtained an

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extension of time under the Prima contract the appellants entered into the second contract for the purpose of fulfilling in part their obligations under the Prima contract. Indeed, in fulfilling their obligations under the second contract the appellants need not have to rely on the MTP shares from Prima. At any rate, before the learned assistant registrar the appellants did not claim their loss on that basis. All they sought was the difference between the contract price of $3.75 and the market price of $2.60 per share prevailing as at the due date. The basis of assessment of damages adopted by the learned assistant registrar was, with respect, in error.

22 That, however, was not the end of the matter. It is settled law that upon a breach of contract, recoverable damages `should be such as may be fairly and reasonably be considered either arising naturally, ie according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable consequence of the breach`: ***Hadley & Anor v Baxendale & Ors*** (1854) 9 Ex 341 at p 354. The learned assistant registrar assessed damages on the basis that these damages fell within the second limb; that assessment as we said was wrong. There was still to be addressed the assessment of damages falling within the first limb. That formed the second ground of appeal contended by the appellants.

23 In respect of the second contract, the learned assistant registrar found that the appellants acted as principals and not as agents and that the respondents knew that the appellants acted as such. On the evidence before him, the assistant registrar was entitled to make that finding, and we could find no ground for disturbing such finding.

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24 The second contract was made subject to the Stock Exchange bye-laws. Bye-law 4.7 of the Stock Exchange bye-laws provides that in a sale transaction on a ready basis, if a purchaser fails to pay the amount due on his purchase, it shall not be necessary for the member company selling such securities to tender the securities purchased. In fact, after 12.30pm on the second market day following the due date, the member company may resell such securities without any notice to the purchaser and claim damages from the purchaser. In addition, by bye-law 4.8, the member company need only deliver the securities to the purchaser after the due date of the contract. Therefore, under such bye-laws the obligation to pay for shares arises before the obligation to deliver the shares; the two obligations are not concurrent. The failure on the part of the respondents to pay on the due date, ie 31 January 1986, sounded in damages as of that date. It was immaterial whether the appellants intended to apply part of the MTP shares which they had purchased from Prima or to buy from the open market to fulfil their obligation to deliver the shares. As the learned assistant registrar found, the evidence led showed that if the respondents had paid for the 880,000 MTP shares on the due date, the appellants would in turn have been able to pay Prima and obtain delivery of the MTP shares to the respondents.

25 In a contract for the sale of shares the measure of damages upon a breach by the purchaser is the difference between the contract price and the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date: ***AKAS Jamal v Moolla Dawood, Sons & Co*** [1916] 1 AC 175, at p 179. At the date of breach, ie 31 January 1986, the market price of MTP shares was $2.60 per share. In the premises, the damages should be awarded on the basis of the difference between the contract price of $3.75 per share and the market price of $2.60 per share, amounting in total to $1,012,000 for 880,000 MTP shares.

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26 Accordingly, we allowed the appeal. We awarded to the appellants damages in the sum of $1,012,000 with interest, as well as costs here and below.

27 ***Appeal allowed.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Scott Thillagaratnam and Navinder Singh (Joseph Tan Jude Benny & Scott) for the appellants
Ng Wing Cheong (Ng & Ng) for the respondents

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