IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1996] SGCA 11

CA 139/1994

Between

Trans-Link Exhibition
Forwarding Pte Ltd

… *Appellant*

And

Wadkin Robinson Asia Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Contract — Contractual terms — Exclusion clauses; Contract — Remedies; Tort — Negligence — Damages

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

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Trans-Link Exhibition Forwarding Pte Ltd v Wadkin Robinson Asia Pte Ltd

[1996] SGCA 11

CA 139/1994
Karthigesu JA; L P Thean JA; Yong Pung How CJ
12 March 1996

1 Cur Adv Vult

2 This is an appeal from the decision of the High Court allowing the counterclaim of the respondents for damages for wrongful delivery by the appellants to an Indonesian company of several items of machinery belonging to the respondents. The material facts that gave rise to this appeal are as follows.

3 ***The facts***

4 The appellants are a member of a group of companies involved in transportation and exhibition logistics and were the official forwarders of exhibits and materials for an exhibition, Woodworking and Forestry Indonesia `88, in Jakarta in 1988. The respondents were one of the participants in that exhibition and had to transport their exhibits, which were woodworking machines, from Singapore to Jakarta. Arrangements were made between the appellants and the respondents for the shipment of the exhibits which was duly carried out by the appellants in September 1988. Two shipments in all were made by the appellants.

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5 In Jakarta, the appellants assisted the respondents, who were then represented by one Swee Geok Khoon (Swee), to set up the exhibits. Upon the setting up of the exhibits but before the start of the exhibition, Swee returned to Singapore. Arrangements were then made between the respondents and the appellants for the transfer of the exhibits, through the latter`s Indonesian counterparts, to a bonded warehouse after the close of the exhibition. Accordingly, after the exhibition the exhibits were transferred to the bonded warehouse. Subsequently, the appellants` Indonesian counterparts delivered some of the exhibits to an Indonesian company, PT Sudagu Dianta (Sudagu Dianta), who were the distributors of the respondents` products in Indonesia. In total, six machines were delivered to Sudagu Dianta, and they consisted of the following:

(1) A Wadkin Robinson Moulder, model GA220/2S+1;

(2) A Wadkin Robinson Moulder, model GB-220M;

(3) A Wadkin Robinson Moulder, model XJ-220;

(4) A Wadkin Robinson Grinder, model NXU-230S;

(5) A Wadkin Robinson Cross-Cut Saw, model BRA-350/4; and

(6) A CKD Dust Extractor.

6 This delivery was made pursuant to a request by Sudagu Dianta. The appellants did not verify with the respondents the legitimacy of the request. The respondents subsequently informed the appellants that no delivery of any machine was to be made without instructions from the former, but this direction came too late, as delivery had by then been made. A dispute then arose between the parties. Subsequently, negotiations took place between Sudagu Dianta and the respondents and a settlement was reached, under which Sudagu Dianta paid to the respondents a sum of $206,800 in final settlement. However, the dispute

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between the appellants and the respondents remained unresolved, and the respondents refused to pay the appellants the charges for the services rendered by the latter.

7 In 1990, the appellants took out a writ in the district court claiming a sum of $29,447.20 being the charges for the transport of the exhibits to Jakarta, as well as for moving them to the bonded warehouse and the return of some other exhibits to Singapore. The respondents denied the claim and counterclaimed the value of the machines that had been misdelivered to Sudagu Dianta. The matter was eventually heard in the High Court.

8 ***The appellants` case***

9 In support of their claim for the services rendered, the appellants contended that the transactions between the parties were contained in separate contracts: two to move two sets of exhibits to Jakarta, one to move the exhibits to the bonded warehouse, and finally one to move a small number of the exhibits back to Singapore. The total amount due under these contracts came to $29,447 and the appellants claimed that they were entitled to this amount for the services rendered, notwithstanding the allegation of misdelivery of the exhibits.

10 As regards the counterclaim, several defences were raised by the appellants. First, they contended that the delivery to Sudagu Dianta were authorized by one Jay J Fonteijn (Fonteijn) acting for the respondents. Fonteijn was present at the exhibition and was seeking employment from the respondents, and at some stage he was employed by the respondents. They alleged that Swee told the appellants` representative, one Danny Khor Beng Leong (Khor), that Fonteijn would be giving instructions on the disposal of the

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exhibits. The appellants were also informed by Swee that Sudagu Dianta were the respondents` agents, and that was understood by the appellants to mean that Sudagu Dianta had the authority to deal with the exhibits. Following the close of the exhibition, Fonteijn gave written instructions directing such delivery and Sudagu Dianta on their part also requested delivery of the items to them. The delivery was thus made with the respondents` authority. Next, in the event that the delivery was not authorized, the appellants relied on the exemption clauses contained in the Standard Trading Conditions of the Singapore Freight Forwarders Association 1986 (SFFA terms), to which the contracts made between the appellants and the respondents were subject. These terms, firstly, exempted the appellants from liability for any loss caused by complying with instructions given by their clients` agents; secondly, limited the amount of their liability; and finally discharged them from any liability unless the suit was brought within nine months after the occurrence of the event giving rise to the claim. The respondents in this case did not institute the action until after the lapse of nine months. The appellants claimed that the respondents knew or ought to have known that the SFFA terms applied; alternatively it was contended that the terms were incorporated in the contracts through a course of dealing. Thirdly, the appellants relied on the arrangement made between Sudagu Dianta and the respondents an d contended that the respondents had received the full value of the machines and could not thereafter claim the same from the appellants. Finally, the appellants also challenged the values of the machines as claimed by the respondents.

11 ***The respondents` case***

12 In response to the claim, the respondents contended that the arrangements between them and the appellants were embodied in one single

contract, part performance of which would not entitle the appellants to recover the charges for the services they had performed. As there had been a misdelivery, the appellants were not entitled to anything at all.

13 In relation to the counterclaim, the respondents contended that the delivery was without their authority. Fonteijn had no authority, and Swee did not make any representation to Khor, as alleged, as he had left for Singapore at the material time. As for Sudagu Dianta, they were merely the distributors of the respondents` goods in Indonesia and were not truly agents of the respondents. The respondents disputed that the SFFA terms were incorporated in the contracts between them. Even if the SFFA terms were so incorporated, the respondents claimed that the clauses were unreasonable under the Unfair Contract Terms Act 1977 of the United Kingdom, which applied by virtue of the Civil Law Act (Cap 43). The respondents denied that the appellants were released by the arrangement the respondents had made with Sudagu Dianta, and maintained that they were entitled to the true value of the exhibits, less what had been paid by Sudagu Dianta.

14 ***The decision***

15 The learned judge found that there were separate contracts between the parties and held that the appellants were entitled to payment of the charges for the services rendered.

16 Turning next to the counterclaim, the learned judge found that the delivery of the six machines to Sudagu Dianta was not authorized. Fonteijn, who died before trial, was not in the respondents` employment at the material time, and had no authority to direct the release of the machines to Sudagu

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Dianta. Although Sudagu Dianta were distributors of the respondents` goods in Indonesia, they were not agents of the respondents for the purpose of taking delivery of the machines. The SFFA terms were not incorporated in and were not part of the contract in question. Further, the relevant terms were not pleaded or proved to be reasonable as required by the Unfair Contract Terms Act 1977 of the United Kingdom. Finally, the learned judge held that the settlement reached between the respondents and Sudagu Dianta could not be relied upon by the appellants as that was only between the respondents and Sudagu Dianta and it was not shown that the respondents had received the full value of the machines from Sudagu Dianta.

17 The learned judge awarded to the respondents substantially the amount of the counterclaim, less the amount paid by Sudagu Dianta. Interest was also ordered from the date of delivery of the machines to Sudagu Dianta, which was taken as the approximate date of the loss.

18 ***The appeal***

19 Substantially the same issues have been raised before us as were raised below. They are as follows:

> (i) whether the delivery of the six machines to Sudagu Dianta was authorized by the respondents at the material time;
>
> (ii) whether the SFFA terms were incorporated in and were part of the contracts between the appellants and the respondents;
>
> (iii) whether the payment of $206,800 by Sudagu Dianta to the respondents was a satisfaction of the respondents` claim;
>
> (iv) whether by virtue of the settlement with Sudagu Dianta the respondents had ratified the wrongful delivery of the machines and waived the tort committed by the appellants; and

(v) the quantum of the award.

20 Before us there was no dispute that though some of the transactions and events took place in Jakarta, no issues of conflict of laws were involved, nor was any evidence of foreign law adduced; so all matters will be considered with Singapore law as the governing law.

21 ***Fonteijn`s authority***

22 The first issue turns on two questions of fact: (i) whether Fonteijn had the authority to instruct delivery of the machines to Sudagu Dianta, and (ii) whether Sudagu Dianta had the apparent or ostensible authority to act on behalf of the respondents to direct delivery of those machines to themselves. The basis of the appellants` claim that Fonteijn had the authority to give instructions for the disposal of the machines was the evidence of Khor that Swee had instructed him to follow Fonteijn`s instructions during the dismantling of the exhibition, and Fonteijn had apparently authorized the appellants to deliver the machines to Sudagu Dianta. The appellants also relied on the fact that Fonteijn was present at the exhibition and was not a stranger to the respondents. He was there seeking employment from the latter and had discussions with them. They contended that Fonteijn`s activities and his presence alongside the respondents` representatives indicated that Fonteijn was a representative as well, and was authorized to give the instruction that was given. The learned judge found that Swee did not give such instructions as alleged and could not have done so as he was not in Jakarta at that time. The learned judge also found that the evidence of the respondents` witnesses showed that Fonteijn was not in their employment, and that there were other persons present who instead of Fonteijn could have given the necessary directions rendering it unlikely that the respondents would have conferred such authority on Fonteijn. In our opinion,

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the learned judge was undoubtedly correct in these findings. The onus lay on the appellants to establish that Fonteijn had the authority and this they had failed to do.

23 ***Sudagu Dianta***

24 We next turn to the apparent or ostensible authority of Sudagu Dianta to act on behalf of the respondents. On this, the appellants relied, first, on the fact that Sudagu Dianta were agents and distributors of the respondents` goods in Indonesia. They relied, secondly, on the evidence of Khor that Swee had told him that Sudagu Dianta were the respondents` agents and by the term `agents` Khor understood it to mean that Sudagu Dianta would be responsible for the machines at the end of the exhibition and therefore Sudagu Dianta could on the respondents` behalf instruct the appellants on what to do with the machines. However, to the contrary was Swee`s evidence that he did not meet Khor, that the alleged conversation did not take place and that Sudagu Dianta were not the respondents` agents having the authority to deal with those exhibits. The learned judge rejected Khor`s evidence and accepted Swee`s evidence. On the evidence before him the learned judge was entitled to do so. As for the position of Sudagu Dianta as agents and distributors of the respondents` goods in Indonesia, the learned judge held thus:

> *The defendants, however, accepted that Sudagu Dianta were their defendants` agents in Indonesia but said they were agents in the sense that they were distributors. ...*

25 In this case the word `agent` was used in a popular and not a legal sense. It clearly meant that Sudagu Dianta were Indonesian distributors for the defendants with no authority to take possession of the defendants` exhibits and appropriate them without prior arrangement. There was no prior arrangement

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for them to take delivery of the machinery. Accordingly, the plaintiffs failed to prove that Sudagu Dianta were the agents of the defendants in the legal sense of the word or that they had the authorization to take possession of the exhibits.

26 We are in entire agreement with him. Sudagu Dianta were the respondents` distributors or selling agents in Indonesia and nothing more, and this fact alone does not give rise to any representation that Sudagu Dianta had the apparent or ostensible authority to act on behalf of the respondents and order the delivery of the exhibits to themselves.

27 ***The SFFA terms***

28 The relevant agreement governing the transaction in question was the third agreement, ie the agreement under which the appellants removed the exhibits and stored them in the bonded warehouse. The question is whether that agreement incorporated the SFFA terms. The agreement was made orally between the parties and there was no evidence that in relation to the instruction to place the goods into the bonded warehouse the respondents` representatives had in fact agreed to the incorporation of the SFFA terms. The appellants claimed to have sent a shipping manual containing the relevant clauses to the respondents, but the latter denied that they had received it. No express finding of fact was made on this, and the only conclusion that can be drawn is that the learned judge found that the appellants failed to prove on the balance of probabilities that the documents were so received. There is no reason why we should interfere with this finding. The appellants relied on the invoice for the services rendered which was sent to the respondents and which contained a note at the bottom stating that the agreement was subject to the SFFA terms. However, that by itself was not effectual in incorporating the SFFA terms, as

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the invoice was received well after the contract was made: ***Olley v Marlborough Court Ltd*** [1949] 1 KB 532.

29 As there was no express incorporation of the SFFA terms in the third agreement itself, the question then is whether such incorporation could be implied from a course of dealing between the parties. The appellants relied mainly on the following documents: their faxes of 15 and 28 September 1988 in which they communicated to the respondents their rates of charges and the scope of their work in handling and transporting the exhibits to Jakarta. The fax of 15 September contained, inter alia, the following term which, however, was in somewhat smaller print compared to the substantive part of the fax:

> *All business is transacted only in accordance with the Singapore Freight Forwarders Association Standard Trading Conditions (1986). Copy available upon application.*

30 The fax of 28 September set out the following paragraph at the bottom:

> *Terms and conditions: all business is undertaken only in accordance with the standard trading conditions of PT Trans-link Global Mandiri (copy upon application) and Trans-link Exhibition Forwarding Pte Ltd, ie the Singapore Freight Forwarders Association (1986). Copies upon application.*

31 Following these faxes, the first and second contracts were made under which the appellants transported the exhibits to Jakarta. The appellants also relied on two invoices both dated 2 October 1988 which were made out by the appellants for services rendered under the first and second contracts. These were sent to the respondents prior to the third contract. Each of these invoices contained the following term:

> *All business is transacted only in accordance with the Singapore Freight Forwarders Association Standard Trading Conditions (1986). Copy is available upon application.*

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32 But this again was in very smaller print at the foot of the invoice.

33 On the basis of the faxes of 15 and 28 September 1988, the SFFA terms might well have been incorporated in and have become part of the first and second contracts. Assuming that they had been so incorporated in the first and second contracts, the question is whether the SFFA terms were also incorporated in the third contract, which was a slightly different contract, ie a contract to remove and store the exhibits in a bonded warehouse. That contract was made orally and there was no document which showed that the appellants entered into that contract on terms that the SFFA terms would be part of the contract also. The appellants submitted that there was a course of dealing between them and the respondents on terms that the SFFA terms would be incorporated in the third contract. The main difficulty in the way of this argument was that there was no evidence of a course of dealing between the two parties. On the evidence, prior to the third contract, there were only the first and second contracts made between them and both related to the transport of the exhibits to the place of exhibition; in effect they were parts of one transaction. There was, therefore, really no evidence of sufficient course of dealing between them on the basis of which it can justifiably be said that the respondents had had sufficient notice of the SFFA terms and by implication these terms had been incorporated in the third contract.

34 The appellants relied on ***Eastman Chemical International AG v NMT Trading Ltd & Anor*** [1972] 2 Lloyd`s Rep 25, and ***Circle Freight International Ltd v Medeast Gulf Exports Ltd*** [1988] 2 Lloyd`s Rep 427. In the first case, the defendants as haulage contractors and carriers undertook to carry for the plaintiffs a quantity of synthetic resin by road from London to Wellesbourne in Warwickshire. In the course of the journey the lorry which

carried the resin, caught fire and the entire quantity of resin was destroyed. To an action by the plaintiffs claiming damages for negligence the defendants pleaded, inter alia, that the contract was subject to the conditions of the Road Haulage Association Ltd and one of the conditions exempted them from liability. One of the issues before the court was whether these conditions which were not expressly agreed to by the plaintiffs were made part of the terms of the contract through a previous course of dealing. Prior to the contract in question, the parties had been dealing with each other for a period of about a year and for every contract made between them the defendants had sent an invoice on which was set out a specific reference to the application of these conditions. It was held that through this course of dealing those conditions had been incorporated in the contract as part of the terms.

35 In the second case, the defendants were exporters of various goods to the Middle East and the plaintiffs were the freight forwarding agents. The defendants exported dresses on a number of occasions using the plaintiffs` services. On one occasion, the dresses collected from the defendants for export were lost through the negligence of the plaintiffs` servant. To a claim by the defendants for damages for negligence the plaintiffs pleaded that the plaintiffs` liability was excluded by the Standard Trading Conditions of the Institute of Freight Forwarders Ltd (1981 Ed). One of the issues was whether those conditions were incorporated in the relevant contract made between the plaintiffs and the defendants. Prior to the contract there were at least 11 occasions where invoices were sent to the defendants containing a notice that the business was conducted on those trading terms. It was held by the Court of Appeal that through the course of dealing those terms had become part of the contract. Taylor LJ, who delivered the main judgment of the court, said, at p 433:

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> *Again, it is not necessary that notice of the conditions should be contained in a contractual document where there has been a course of dealing.*

36 Here, the parties were commercial companies. There had been a course of dealing in which at least 11 invoices had been sent giving notice that business was conducted on the IFF terms at a place on the document where it was plain to be seen. Mr Zacaria knew that some terms applied. He knew that forwarding agents might impose terms which would frequently be standard terms and would sometimes or frequently deal with risk. He never sought to ask for or about the terms of business. The IFF conditions are not particularly onerous or unusual and, indeed, are in common use. In these circumstances, despite Mr Gompertz`s clear and succinct argument to the contrary, I consider that reasonable notice of the terms was given by the plaintiffs. Putting it another way, I consider that the defendants` conduct in continuing the course of business after at least 11 notices of the terms and omitting to request a sight of them would have led and did lead the plaintiffs reasonably to believe the defendants accepted their terms.

37 Plainly, the facts in these cases were far removed from those at hand. There was in this case no such course of dealing between the appellants and the respondents. The appellants have not shown that by the course of business and conduct of the parties the SFFA terms had been incorporated in the third contract.

38 ***Satisfaction***

39 On this issue, the appellants contended that the respondents had received full satisfaction of their claim from Sudagu Dianta and in consequence have no claim against the appellants. It was not in dispute that the respondents had received from Sudagu Dianta a sum of $206,800 in satisfaction of their claim

against the latter and in consideration of such payment one Frankie Chew Hai Peng, a director of the respondents, had affirmed a statutory declaration in the following terms:

> *I Frankie Chew Hai Peng I/C No: 0156454/D of No 4 Tudor Close, Singapore 1129 being a director of Wadkin Robinson Asia Pte Ltd (herein called the company) hereby declare that the company has received the amount of S$206,800 credited to the company`s current account at the Hongkong & Shanghai Banking Corp on 27 December 1989 from PT Sudagu Dianta.*

40 The company agrees and affirms that final settlement from PT Sudagu has been received and that no further claims will be submitted.

41 In addition, there were also the auditor`s report and accounts of the respondents for the years ended 31 December 1988 and 31 December 1989 respectively. In the accounts for the year 1988 there was a note that a sum of $237,000 represented `a claim against a handling agent for loss of goods`, and this was treated in the accounts as part of the amount owing from trade debtors and as part of the current assets of the respondents. The auditors` report attached to the accounts also stated that the respondents were taking action and claiming this amount. But in the auditor`s report and accounts for the subsequent year, which were prepared after the respondents had received payment of the sum of $206,800 from Sudagu Dianta, no mention whatsoever was made in respect of such claim.

42 Relying on all these facts, the appellants contended that the only inference is that the respondents had been paid in full by Sudagu Dianta for the loss of the machines. We are unable to accept this argument. First, the settlement reached between the respondents and Sudagu Dianta was wholly a matter between the two of them, and it was open to the respondents to accept from

Sudagu Dianta a sum of money which was less than the actual value, leaving the balance to be claimed from the appellants. Secondly, the appellants have placed too much emphasis on the annual accounts of the respondents. What the respondents had done was to reflect in their accounts a claim which they had against their handling agents in respect of the loss of their goods. At that time they valued their claim in the sum of $237,000. It is not unusual for a company to treat a claim conservatively and understate the amount it can recover. This may well be the position taken by the respondents. We are not persuaded that the amount provided in the accounts really represented the true measure of their loss. The accounts, in our view, represent at most an equivocal statement or an estimate of their claim at that time. They were certainly not precluded thereby from pursuing their claim against the appellants.

43 ***Waiver of tort***

44 The appellants also relied on the settlement reached with Sudagu Dianta in support of another argument, and it is this. By accepting the sum of $206,800 from Sudagu Dianta in settlement of their claim they had, in effect, ratified the unauthorized delivery of the machines to Sudagu Dianta and thereby had waived the tort committed by the appellants. In other words, the respondents had elected to affirm and ratified the wrongful delivery and having so elected they cannot claim against the appellants damages for the loss of the same machines. Again, we are unable to accept this argument. In this case, both the appellants and Sudagu Dianta were tortfeasors. The respondents were entitled to pursue their claims against Sudagu Dianta as well as the appellants either together at the same time or separately at different times. Having obtained payment from Sudagu Dianta which did not fully satisfy their loss they were entitled to pursue their claim against the appellants for the balance of their loss. It cannot be said

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that having come to a settlement with and received a payment from Sudagu Dianta they have thereby elected to waive the tort against the appellants.

45 The appellants relied on the case of ***Verschures Creameries Ltd v Hull And Netherlands Steamship Co Ltd*** [1921] 2 KB 608. The facts in that case were quite different. There, the defendants who were carriers and forwarding agents were authorized by the owners to carry the goods to Hull and thence to a customer in Manchester. When the goods arrived at Hull the owners instructed the agents not to deliver the goods to the customer. However, contrary to this instruction, the agents nonetheless delivered the goods to the customer. The owners thereafter invoiced the goods to the customer and not having received any payment sued him and recovered judgment for the price of the goods sold and delivered and following that proceeded with bankruptcy proceedings against the customer. It was held that in those circumstances, the owner had elected to treat the delivery to the customer as authorized and they could not thereafter pursue the action against the agent for misdelivery. Atkin LJ said, at p 612:

> *... The owners treated the goods as having rightly come to his hands; they sued him for the price of them, recovered judgment against him, and made him a bankrupt. Thereby they affirmed and ratified the act of the forwarding agents. Having done that they cannot afterwards sue the agents as having acted in breach of their mandate.*

46 Clearly the position here is quite different. The respondents had not in any way treated the delivery of the machines to Sudagu Dianta as having been authorized and there was no ratification of the wrongful delivery thereof, express or implied. They recovered what they could from Sudagu Dianta and thereafter pursued their claim against the appellants. Such courses of action they were fully entitled to take.

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47 A case which is closer to the one at hand is ***Rice v Reed*** [1901] 1 QB 54. There, the plaintiffs` servant, S, wrongfully appropriated their goods and sold them to the defendants who were aware that S was improperly dealing with the goods. The plaintiffs brought an action against S and subsequently a settlement was reached whereby S agreed that a sum with his bank should be paid to the plaintiffs in full settlement of all claims against S without prejudice to their claim against the defendants, and this agreement was subsequently embodied in a consent order. Before the agreement was reached, the plaintiffs had instituted an action against the defendants claiming damages for conversion of the goods. It was held by the Court of Appeal that the plaintiffs had not, by suing S and coming to an agreement with him, elected to affirm the sale and waive the tort against the defendants. Lord Russell of Killowen CJ, after referring to the two old cases, ***Morris & Anor v Robinson*** (1824) 3 B & C 196; 107 ER 706 and ***Burn v Morris*** (1834) 4 Tyr 485, came to the following conclusion, at pp 64-65:

> *... Those cases seem to establish two propositions: first, that an application for the proceeds of goods said to have been tortiously dealt with is not conclusive proof of election to affirm the transaction; and, secondly, that the receipt of part of the proceeds is not conclusive proof of election.*

48 In the present case it is to be noticed that the money was obtained from the bank under a compromise, and one cannot shut one`s eyes to this fact, when determining what is the proper inference to be drawn from the circumstances of the case, namely, that the receipt of the money by the plaintiff was in relief of the defendant, and went in diminution of the damages payable by him, as the defendant will get the benefit of the money received from the bank. Upon the whole, I have arrived at the conclusion that there are no such circumstances in this case as to oblige the court to say that the plaintiff has, by his dealings with Soltau, conclusively elected to affirm the sale of the sawdust by Soltau to the

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defendant so as to be estopped from maintaining this action against the defendant. The appeal must, therefore, be dismissed.

49 Precisely the same thing occurred here. The payment of $206,800 by Sudagu Dianta was in diminution of the damages payable to the respondents and there was no circumstance to suggest that by dealing with Sudagu Dianta and recovering that sum from them the respondents had elected to affirm and ratify the unauthorized delivery of the exhibits to Sudagu Dianta and waive the tort against the appellants.

50 ***Quantum***

51 We now turn to the quantum of damages. The respondents computed their losses as follows:

> (i) One unit Wadkin Robinson MoulderGA 220/2S + 1 and accessories $ 106,267.87
>
> plus stocking cost/freight $ 113,175.28
>
> plus profit margin of 25% $ 150,900.37 $ 150,900.37
>
> (ii) One unit Wadkin Robinson Moulder
>
> GB220M and accessories $ 52,245.53
>
> plus stocking cost/freight $ 55,641.49
>
> plus profit margin of 25% $ 74,188.65 $ 74,188.65
>
> (iii) One unit Wadkin Robinson Moulder
>
> XJ220 and accessories $ 206,033.80
>
> plus stocking cost/freight $ 219,426.00
>
> plus profit margin of 25% $ 292,568.00 $ 292,568.00
>
> (iv) One unit Wadkin Robinson Moulder
>
> NXU 230S $ 30,424.79

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plus stocking cost/freight $ 32,402.40

plus profit margin of 25% $ 43,203.20 $ 43,203.20

(v) One unit Wadkin Robinson Cross-Cut Saw,

model BRA 350/4 $ 3,744.54

plus stocking cost/freight $ 3,987.94

plus profit margin of 25% $ 5,317.25 $ 5,317.25

(vi) One unit of CKD direct extraction equipment

(the dust extractor; converted to S$) $22,212.48

plus stocking cost/freight $23,656.29

plus profit margin of 25% $31,541.72 $31,541.72

$597,719.19

52 The total of the amounts came to $597,719.19. The learned judge allowed an amount of $561,600 for the first five machines and an amount of RM32,000 for the last item. In making this award, the learned judge allowed to be added to the value of the machines the `stocking` costs and profits margin as claimed by the respondents.

53 The appellants argued that the amount awarded by the learned judge was not supported by the evidence and, in particular, there was no evidence supporting the claim for stocking costs and profits. The true value of the machines, so it was submitted, was $237,000.00. The basis for this argument was the note in the audited accounts of the respondents for the year ended 31 December 1988 which was to the effect that a sum of $237,000 represented their claim against their handling agent and the absence of such note in their accounts for the subsequent year which were prepared after the receipt of $206,800 from Sudagu Dianta. We have dealt with these aspects of the accounts and need say no more. Suffice it to say here that these accounts provide no basis for such argument.

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54 The appellants next relied on certain declarations made by Swee and furnished to the appellants in the course of the latter transporting the exhibits of the respondents to Jakarta for the exhibition. In these declarations various sums were stated as the values of the exhibits, including five of the machines in question, and the total value of the five machines in one of the declarations amounted to US$113,604, which converted into Singapore currency at the prevailing rate of exchange (US$1:S$2) would be S$227,208. It is unclear in what circumstances the declarations were made. It appears to us that these were shipping documents, and the amounts stated were c i f values for five exhibits only. Swee in his evidence said that they were below the market values. Although these declarations were the respondents` documents and could amount to admission of the values of the exhibits, such values are not conclusive. For all these reasons we are unable to accept the appellants` contention that the true value of the machines was only $237,000.00.

55 In the alternative, the appellants argued that the true value amounted to $420,925. The appellants relied first on a letter written on behalf of the respondents to the appellants dated 15 December 1988 in which the respondents gave the total value of the machines as approximately $450,000.00. Secondly, there was evidence from one John Morris, the managing director of the respondents, who testified that the total cost of the machine without the element of profits added was $448,289.40. The witness also agreed in evidence that the cost of the machines as set out in their computation amounted to $420,925.00, without taking into account stocking costs and profits. Further, the figure of $450,000 was also adopted in the affidavit of one Pakirisamy Sivaraman, the commercial manager of the respondents.

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56 We think there is some merit in this argument. The machines in question were supplied to the respondents from or through their parent company. The basic costs, ie the costs without adding the stocking costs and profit margin as claimed, were derived from the invoices of these machines received by the respondents from their parent company or associate company. These invoices had been produced by the respondents in evidence. They were only evidence of the fact that the respondents had received such invoices. They were, of course, not evidence of the truth of the contents. In so far as the truth of the contents, the respondents relied on the oral evidence of their witnesses. First, there was Pakirisamy Sivaraman who testified the costs of the machines. There was also the evidence of John Morris whose evidence was to similar effect. There was, therefore, evidence of the costs of these machines. The learned judge accepted such evidence. However, as regards the stocking costs and profits, no evidence was adduced to prove these two items. These two components should therefore be excluded in the computation. Excluding these two components the value of the machines would amount to $420,929.01 (and not $420,925). We would therefore award to the respondents the amount of $420,929.01 as the total value of the machines. From this sum should be deducted the amount of $206,800.00 paid by Sudagu Dianta and the amount of $29,447.20 due to the appellants, and the balance payable to the respondents is $184,681.81.

57 ***Interest***

58 The learned judge awarded interest to the respondents from the time of the loss, ie the date of misdelivery to Sudagu Dianta, to the date of judgment. The appellants contended that the respondents had been guilty of inordinate delay in pursuing the claim: there was a lapse of about 21/2 years between the date of wrongful delivery of the exhibits and the date when the respondents

brought their claim. We think that this complaint is justified and the interest should be awarded to the respondents for the period from the date of the respondents` counterclaim, ie 26 April 1991 to the date of judgment, ie 30 July 1994.

59 ***Conclusion***

60 We vary the order below by reducing the amount awarded to the respondents to $184,681.81 with interest thereon at 6% pa from 26 April 1991 to 30 July 1994. To that extent the appeal is allowed.

61 ***Costs***

62 We now come to the question of costs. The appellants have failed in four of the issues and succeeded only on the last issue on the quantum of damages. In the circumstances they should bear part of the costs of the appeal, and we would award to the respondents one-quarter of the costs of the appeal. We so order. There will also be the usual consequential order for payment to the respondents or their solicitors the deposit in court as security for costs.

63 ***Appeal allowed in part.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

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Belinda Ang and Goh Kok Leong (Ang & Pnrs) for the appellants
Yeo Hock Cheong and Jimmy Yap (Hock Cheong & Co) for the respondents

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