IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 204

Suit 1973/1995

Between

Gericke Pte Ltd

… *Plaintiff*

And

Nortrans Shipping Pool Pte Ltd

… *Defendant*

And

Dah Chong Industries Pte Ltd

… *Third Party*

GROUNDS OF DECISION

Admiralty and Shipping — Carriage of goods by sea — Voyage charterparties

Version No 1: 20 Nov 2026 (00:35 hrs)

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Gericke Pte Ltd v Nortrans Shipping Pool Pte Ltd (Dah Chong Industries Pte Ltd, Third Party)

[1997] SGHC 204

Suit 1973/1995
Tan Lee Meng JC
31 July 1997

Judgment:

TAN LEE MENG JC

Cur Adv Vult

The plaintiffs, who shipped a tilting platform from Singapore to Laem Chabang in Thailand on board the `Hamlet Arabia`, claim damages from the defendants, the time charterers of the vessel, for failing to deliver the cargo at the port of delivery. The defendants have a counterclaim against the plaintiffs with respect to damage allegedly caused to the shipowner`s crane and to the Port of Singapore Authority wharf at Pasir Panjang by the plaintiffs` cargo when it fell from the said crane while it was being loaded onto the vessel. It is the defendants` case that the cargo fell because it was much heavier than its declared weight. The plaintiffs contended that if they are liable to the defendants, they are entitled to an indemnity from the third party, the manufacturers of the tilting board, from whom the particulars regarding the weight of the tilting platform were obtained. During the trial, the plaintiffs withdrew their claim against the

third party, who, in turn, withdrew their counterclaim against the plaintiffs with respect to the balance of the purchase price of the tilting platform which remained unpaid.

2.The facts which gave rise to these proceedings are as follows. On 1 October 1995, the plaintiffs` tilting platform was delivered to the PSA wharf at Pasir Panjang by the manufacturers of the tilting platform. Prior to the delivery, the plaintiffs` shipping agents had stated in the shipping order form and in the draft bill of lading that the weight of the tilting platform was 12 metric tons. For the purpose of loading the tilting platform onto the Hamlet Arabia, the vessel`s crane No 5, which had a safe working load of 12.5 metric tons, was used to lift the cargo. While this was being done, the tilting platform fell and damaged the PSA wharf as well as the vessel`s crane. After the accident, the stevedores managed to load the tilting platform, which was slightly damaged, onto the vessel. The bill of lading, which was subject to the Hague-Visby Rules, as applied by the Carriage of Goods by Sea Act, was issued to the plaintiffs one day after the accident. It provided that the contract of carriage shall be governed by English law.

3.When the vessel reached the port of delivery, the defendants claimed a lien on the goods with respect to the damage caused to the vessel`s crane and the PSA wharf. They contended that this right was conferred by cl 16 of the bill of lading, which provided as follows:

> *The carrier shall have a general lien on the goods and any documents relating thereto for all sums payable to the carrier under this contract and for general average contributions to whomsoever due and for the cost of recovering the same, and for that purpose shall have the right to sell the goods by public auction or private treaty without notice to the merchant.*

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On 10 October 1995, the defendants` Thai solicitors, M/s Paiboon Sutuntivorakoon Ltd, informed the plaintiffs that the defendants would not deliver the tilting platform unless the plaintiffs furnished them with a bank guarantee for the sum of US$202,678 as security for claims which might arise from the loading accident on 1 October 1995.

4.The plaintiffs were unwilling to furnish the guarantee as the tilting platform had been fabricated in Singapore for only S$39,000. Furthermore, they thought that the defendants` basis for calculating the amount required by way of a bank guarantee was speculative. On 16 October 1995, the plaintiffs` solicitors notified the defendants` Thai solicitors that any loss suffered by the plaintiffs as a result of the retention of the tilting platform will have to be borne by the defendants. On 19 October and 21 October 1995, the plaintiffs` solicitors demanded the immediate release of the tilting platform. In the meantime, the plaintiffs were pressured by their Thai clients to deliver the tilting platform as the latter had an ongoing project which necessitated the immediate use of the platform. As the Thai clients threatened to hold the plaintiffs liable for losses incurred as a result of the late delivery of the tilting platform, the plaintiffs ordered another tilting platform from a Thai factory.

5.On 24 November 1995, the plaintiffs received a letter from the defendants` Thai solicitors intimating that the defendants were now willing to release the cargo on the basis that they reserved the right to take legal proceedings without further notice for any loss or damage suffered by them as a result of the accident on 1 October 1995. By then, the Thai factory had already delivered the new tilting platform to the plaintiffs` Thai customer. The plaintiffs, who paid S$36,974 for this tilting platform, instituted an action to recover damages from

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the defendants with respect to the defendants` failure to deliver the tilting platform which had been fabricated in Singapore to the named consignee.

6.Whether the plaintiffs are entitled to damages for breach of the contract of carriage by sea depends on whether the defendants had a lien on the plaintiffs` cargo and, if they did, on whether they exercised their lien properly. A question arises as to the scope of the defendants` contractual lien. However, the plaintiffs did not plead that the terms of the lien clause in the bill of lading were not wide enough to give the defendants a contractual right to retain the tilting platform. Instead, they took the approach that it was wholly unreasonable for the defendants to demand a bank guarantee for US$202,678 when the value of the tilting platform which was shipped from Singapore was only approximately US$25,000.

7.The exercise of a contractual lien must be within reasonable limits. (See **Lyle Shipping Co Ltd v Corp of Cardiff** [1899] 5 Com Cas 87 and ***The Boral Gas; Rashtriya Chemicals and Fertilizers Ltd v Huddart Parker Industries Ltd*** [1988] 1 Lloyd`s Rep 342.) A shipowner who relies on a lien clause must be careful enough to insist on the payment of sums that are properly ascertained. In **Albermarle Supply Co Ltd v Hind & Co** [1928] 1 KB 307 at p 318, Scrutton LJ explained:

> *A person claiming a lien must either claim it for a definite amount or give the owner particulars from which he himself can calculate the amount for which a lien is due. The owner must then in the absence of express agreement tender an amount covering the lien really existing. If he does not, unless excused, he has no answer to a claim of lien. He may be excused from tendering (1) if he has no knowledge or means of knowledge of the right amount; (2) if the person claiming the lien for a wrong cause or amount makes it clear that he will not release the goods unless his full claim is satisfied and that claim is wrongful.*

8.In this case, even if the defendants had a lien, it was not properly exercised because the amount demanded by way of a bank guarantee was exorbitant. The defendants` Thai solicitors stated in their letter of 11 October 1995 that the guarantee was in respect of the following: (a). damage to the crane - US$63,380.28;

(b). damage to the wharf including a possible loss of use claim by PSA - US$49,295;

(c). storage charges in Thailand - US$200 per month;

(d). survey charge and possible legal costs in Thailand (assuming there is litigation) - US$41,155;

(e). interest on default at 7.5% per annum (assuming litigation in Thailand for one and a half years) - US$20,478.

Two examples may be cited to show that the amount demanded by the defendants was exorbitant. To begin with, the defendants claimed a right of lien with respect to US$63,380.28 for repairs to the vessel`s crane No 5 when the cost of repairs amounted to less than US$6,000. As for the amount demanded with respect to the loss of use of the PSA wharf, the defendants` witness, Captain V Gagan, a surveyor then working on a case by case basis for Seaborne Agencies Pte Ltd, which had been instructed by the defendants to look into the circumstances leading to the accident and to survey the nature and extent of the damage to the PSA wharf, said in his affidavit that it appeared that the scheme of berthing of vessels in the vicinity of the said wharf was hardly, if at all, affected by the rather insignificant area of damage. He added that disruption to PSA`s operations was negligible.

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9.Admittedly, the fact that the amount demanded by a person who claims a lien is out of proportion to his lien does not always matter for as Scrutton LJ put it in **Albermarle Supply Co Ltd v Hind & Co** [1928] 1 KB 307 at p 319, which has been referred to above, the `fact that a claim is made for more than the right amount does not matter unless the claimant gives no particulars from which the right amount can be calculated, or makes it clear that he insists on the full amount of the right claimed.` In this case, the fact that the defendants` claim was for an exorbitant amount matters because the defendants furnished no particulars from which the right amount can be calculated and they insisted on the full amount claimed until after the plaintiffs had mitigated their loss by ordering another tilting machine for their Thai clients. In the circumstances, the defendants` assertion that the plaintiffs ought to have taken delivery of the tilting platform which had been shipped from Singapore after the defendants decided not to insist on the furnishing of a bank guarantee does not hold water. The plaintiffs are thus entitled to damages for the defendants` failure to deliver the cargo at the port of delivery in accordance with the terms of the contract of carriage. As such, the defendants are liable to pay the plaintiffs the cost of the second tilting platform, which amounts to S$36,974, together with interest as from the date of the writ to the date of judgment.

10. **The defendants` counterclaim**

In their counterclaim, the defendants claim to be entitled to damages and to a declaration that the plaintiffs are liable to indemnify them against any liability, loss or damage incurred or to be incurred by them in consequence of claims made or to be made against them in respect of the loading accident on 1 October 1995. The defendants, who contended that the true weight of the tilting platform was 16.27 tons and that the wire runner of the crane snapped because the tilting

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platform was too heavy for the crane, said that they relied on the plaintiffs` representation in the shipping order form and the bill of lading that the tilting platform weighed 12 metric tons. In their view, the accident would not have occurred had the true weight of the tilting platform been properly declared because another more powerful crane would have been used to lift the tilting platform onto the vessel. They asserted that the plaintiffs were in breach of cl 14 of the bill of lading, which provided as follows:

> (1) The shipper warrants to the carrier that the particulars relating to the goods as set out overleaf have been checked by the shipper on receipt of this bill of lading and that such particulars and any other particulars furnished by or on behalf of the shipper are correct.
>
> (2) The shipper shall indemnify the carrier against all loss damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under this bill of lading to any person other than the shipper.

In the alternative, the defendants contended that the plaintiffs are liable for negligent misrepresentation in that they or their servants or agents failed to take reasonable care that the statement regarding the weight of the tilting platform was accurate.

11.It is for the defendants to prove that their loss was caused by the plaintiffs. After all, art IV r 3 of the Hague-Visby Rules, which was relied upon by the plaintiffs, provides as follows:

> *The shipper shall not be responsible for loss or damage sustained by the carrier or the ship or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.*

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To begin with, the actual weight of the tilting platform has not been established. When the defendants arranged for the tilting platform to be weighed in Thailand by Star Marine Engineering Co Pte Ltd, its weight was reported to be 16.271 metric tons. However, the defendants` own witness, Mr Wanchai Tanomsing, a Thai engineer employed by Star Marine, admitted that a number of wooden logs might have been weighed at the same time as the tilting machine. If this was the case, the tilting platform was not accurately weighed. Furthermore, a large wooden crate containing steel parts, which was on the tilting platform when it was being lifted onto the Hamlet Arabia by crane No 5, was also weighed together with the tilting platform. The third party, who transported the tilting platform from their factory to the PSA wharf, denied that the wooden crate was part of the tilting platform. They pointed out that while the tilting platform had other parts, those other parts were shipped to Thailand in a container on board another vessel. As the tilting platform and the mysterious wooden crate have since been abandoned, it is not possible to determine who owned the crate. Even if the weight of the wooden crate is discounted, as the tilting platform was weighed together with wooden logs, the tilting platform itself could not have weighed 16.271 tons. It is pertinent to note that the defendants` witness, Captain V Gagan, said that although the safe working load of crane No 5 was 12.5 metric tons, it could lift another 25% of that weight. This means that the crane`s wire runners should not have parted if the weight of the tilting platform did not exceed a little over 15 metric tons. The plaintiffs` case is that if the weight of the logs and the wooden crate with steel parts is discounted, the tilting platform could not have been so heavy as to prevent it from being lifted safely by crane No 5. As such, it may well have been that this crane was defective.

12.The defendants` case has also been weakened because there was no proper investigation into the cause or causes of the loading accident. The defendants`

main witness, Captain Gagan, took the view that the accident occurred because the cargo weighed more than its declared weight. However, he was not at the scene of the accident and the master of the Hamlet Arabia, who refused to be interviewed, did not allow any member of the crew to be interviewed. Captain V Gagan was also not allowed to examine crane No 5 or the relevant documents, such as the cargo gear record book, which would have revealed the inspection dates and the condition of the crane. He also did not inspect the wire rope which was supposed to have parted because of the weight of the cargo.

13.Captain V Gagan admitted that he did not discuss the accident with other important witnesses of the accident, such as the stevedores and the P & I Club representative. It is regretted that the defendants did not call any of the witnesses of the loading accident to give evidence on the cause of the accident. It is also pertinent to note that the defendants had in their possession two reports with respect to the accident but their counsel declined to tender these reports as evidence on the ground that they were privileged documents.

14.The plaintiffs contended that the loading accident on 1 October 1995 was caused by or was partly caused by the negligence of the defendants, their servants or agents. The plaintiffs listed the following as particulars of the alleged negligence: (a). using a crane with a safe working load of 12.5 metric tons to lift the goods onto the vessel when they knew or ought to have known that it was unsafe to do so;

(b). failing to use a crane with a safe working load of 35 metric tons when told to do so by the third officer of the Hamlet Arabia;

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(c). failing or refusing to heed the warnings of the supercargo of the vessel to cease all attempts to lift the tilting platform by using the crane with a safe working load of 12.5 metric tons;

(d). using a forklift to assist in the lifting of the tilting platform when they knew or ought to have known that it was unsafe to do so;

(e). failing to employ a safe and proper system of loading.

15.The statements of the master and the supercargo of the Hamlet Arabia reveal that the loading procedures adopted on the day of the accident left much to be desired. Important instructions regarding the loading of cargo could not be communicated in time or were disregarded. In a telex to the defendants on 1 October 1995, the master of the vessel noted as follows:

> *[It] was seen by duty officer (3/O) Mr D Ghosh that the crane could not lift the cargo. As such, he protested to the supercargo, Mr Age Sansaunet and the stevedore foreman, who were present there. However, he was ignored and further he saw a 15 MT forklift being used to assist the cargo. On noticing this irregularity, the third officer immediately ran to the engine room to put the crane power off. But before he could put the power off, the crane with the help of forklift, lifted the cargo to approx 4 MTR HT and then as the forklift backed out due to the apparent excessive weight, the crane runner wire parted and the cargo of tilting platform fell heavily on the wharf.*

The supercargo, Captain Age Sandsaunet confirmed in his statement of 5 October 1995 that the situation was chaotic when he said:

> *I then went to the foredeck to check cargo work there and exchanged a few words with the third officer who was on duty. The third officer then noticed that the stevedores were about to lift the tilting platform and asked how heavy it was. I told him it was 12 tons. That seemed to worry him and he went and told the stevedores to stop what they were doing and use the 35 ton crane at the other end of the hatch instead.*

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> *Wondering why he was worried I asked if the crane was not good for 12 tons. He said yes, the crane was good for 12 tons and hesitatingly allowed the work to progress. We then both went to the lifeboat deck to see the tilting platform being lifted on board.*
>
> *The crane was just able to lift the tilting platform clear off the trailer it was lying on. I turned to the third officer and commented something about the crane`s lifting capacity. He was clearly worried and started for the accommodation. I then turned to the stevedores and signalled and shouted for them to lower the tilting platform down. They did not pay any attention and somebody had got the idea of having a ten-ton forklift help lifting. By help of the forklift they lifted the tilting platform a further about 4m up and then backed the forklift out.*
>
> *Naturally, the crane could still not lift it further. By now even the stevedores realised that the tilting platform could not be loaded this way and started to lower it down. When it was about 1-2m above the wharf the crane wire parted and the tilting platform fell down.*

In view of the reports of the master and supercargo, the plaintiffs contended that the accident could not have happened had the third officer`s instructions been followed and that the accident could have resulted from the negligence of the stevedores or the crew.

16.The onus is on the defendants to prove their counterclaim. As they failed to prove that the loading accident on 1 October 1995 was caused by the plaintiffs` failure to provide accurate information with respect to the weight of the tilting platform, their counterclaim is dismissed.

17. **Costs**

As for costs, the plaintiffs are entitled to costs. However, in relation to the third party, there is no order as to costs.

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Tan Lee Meng JC

Anthony Lee and Lye Kah Cheong (Bih Li & Lee) for the plaintiffs
Abbas Ali bin Fakhruddin (Joseph Tan Jude Benny & Scott) for the defendants
Ravinran Kumaran (WT Woon & Co) for the third party

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