

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 208

DA 59/1996

Between

Lim Check Meng

... Appellant

And

Orchard Credit (Pte) Ltd

... Respondent

GROUND OF DECISION

Civil Procedure — Delay; Contract; Credit and Security — Hire-purchase

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Lim Check Meng v Orchard Credit (Pte) Ltd

[1997] SGHC 208

DA 59/1996
Lai Kew Chai J
08 August 1997

1 The appellant's implied right to quiet enjoyment of the Mercedes Benz 450L which he hired from the respondents under a hire purchase agreement dated 25 February 1985 was interrupted twice from 23 March 1985 to 30 April 1987 (a period just over two years and one month which will be referred to as 'the first seizure') and again from 5 September 1987 to 15 September 1987 ('the second seizure'). It was only on 14 October 1992 that the appellant commenced an action in District Court Suit 7778 of 1992 against the respondents claiming general damages in the sum of \$23,312.20 and special damages in the sum of \$19,671.05. Of the special damages, the item for costs of repairs amounted to \$14,410.38.

2 At the conclusion of the trial, the trial judge Koh Juat Hong DJ gave judgment for the appellant in the nominal sum of \$500 and interest at 6% from date of service of the writ to date of judgment with no order as to costs. The trial judge found that the appellant's claims were statute barred as far as those arising out of the first seizure were concerned. In relation to the costs of repairs claimed by the appellant the trial judge noted the eight repair bills included in the agreed bundle before her but she found it impossible to apportion the repair bills

exhibited to account for damages to the car due specifically to the first seizure period or to the second seizure period. The claims grounded on the second seizure were time barred.

3 In this appeal, the appellant seeks to reverse the judgment below only to the extent of asking for judgment in the sum of \$14,110.38 being the costs of repairs and costs. He abandoned his other claims.

4 The facts giving rise to this appeal are not in dispute. One Lee Tian Meng (`Lee`) offered to sell the car to the appellant for \$95,000. As the appellant could or wanted to pay only \$40,000 towards the purchase price, he and Lee approached the respondents to purchase the car and let it on hire to the appellant. The appellant entered into a hire purchase agreement dated 25 February 1985 with the respondents. Under the agreement, the hiring commenced on 25 March 1985. The appellant agreed to pay the hire instalments at the rate of \$2,795.83 per month. If the appellant duly performed the agreement he would, as an incident to such agreement, be entitled to exercise the option to become the owner of the car. In the meantime, he was the hirer and the respondents as the owners were responsible for the registration fees and road taxes.

5 What happened next led to a chain of events giving rise to protracted litigation. Both the appellant and the respondents left the registration of the transfer to Lee alone. He forged the registration particulars of the transfer and failed to honour a cheque which he presented to the Registrar of Vehicles (`ROV`) for the registration fee and road tax. He was eventually convicted and imprisoned for cheating.

6 On 23 March 1985 the ROV seized the vehicle for non-payment of the additional registration fee of \$41,811, registration fee of \$1,000 and arrears of

the road tax for the period January to June 1985 amounting to \$2,938. The car remained in the custody of the ROV until 30 April 1987 when it was ordered, after a Disposal Inquiry, that it be returned to the appellant.

7 On 10 July 1985 the respondents issued a writ against the appellant in the High Court in Suit No 6648 of 1985 for the instalments and interest due. The appellant pleaded the defence of set-off in respect of the sum of \$44,280 which was paid by the appellant to the ROV.

8 On 5 September 1987 the car was seized again by the ROV as the road tax and registration fee remained unpaid. On 15 September 1987 the appellant paid all dues to the ROV and regained possession of the car. This was the second seizure.

9 On 10 October 1985 the trial judge in the High Court gave judgment for the respondents and ruled that the appellant was not entitled to the set-off as he was of the view that the seizure of the vehicle was not a lawful exercise of the powers of the ROV and that the losses were therefore caused by the action of a third party. The decision was reversed by the Court of Appeal in November 1993. It was further ruled that the respondents, as owners of the car, had assumed the encumbrance of paying for the outstanding dues to the ROV and that their breaches led to the seizure of the car twice.

10 The appellant raises two issues in this appeal. The first issue is whether the appellant's claims founded on the first seizure are statute barred under s 24A(3) of the Limitation Act (Cap 163, 1996 Ed) (‘the Act’)? The second issue is the amount of damages which the appellant had proved at the trial.

11 In relation to the first issue the decisions of the trial judge were as follows. `In respect of the first seizure, the cause of action accrued on 23 March 1985 when the car was seized. That was the time the breach of quiet possession took place. In my view, the earliest date on which the (appellant) had a right to bring the action was also on 23 March 1985.` The trial judge further found as a fact that the `(t)he earliest date on which the (appellant) had the knowledge required for bringing an action for the costs of repairs was around 30 April 1987 when the car was released to him.` On those findings, in relation to the claims founded on the first seizure of the car the trial judge concluded that `(t)he latest date the action ought to have commenced was 22 March 1991.`

12 It was submitted on behalf of the appellant in this appeal that the period of six years commenced from the date the damage was suffered and not from the date of the breach of duty giving rise to the damage. When applied to the facts in this case, it was argued that the cause of action accrued on 30 April 1987 and the action would have been statute barred only on 29 March 1993. Accordingly, the appellant, having commenced the action on 14 October 1992, was not barred by the Act from claiming the costs of repairs.

13 These arguments require an examination of the relevant provisions of the Act. The Act was amended in 1992. By the Limitation (Amendment) Act 1992, Act No 22 of 1992, changes were made to the law of limitation of actions as it affected and would affect actions for negligence, nuisance and breach of duty. In the course of the second reading of the Bill, which was passed by Parliament on 29 May 1992, the Minister for Law (Professor S Jayakumar) referred to the problems of the then existing law which provided that a cause of action accrued before it was possible to discover the damage. The Minister in summing up said: `What (the Bill) does is to extend the limitation periods for personal and non-personal injury claims by providing an alternative starting

date for the limitation period, ie the date the aggrieved person has knowledge of the damage. The limitation period would be computed from the date that expires later. It also seeks to balance the interest of potential defendants by providing that no action may be brought after 15 years from the date of the breach of duty even though the damage or injury has not and could not be discovered.` The Amendment Act of 1992 introduced new sections 24A, 24B and 24C in the Act.

14 For the purposes of this appeal, the relevant provisions in the Act are s 24A(3) and s 24C.

15 Section 24A(3) provides:

An action to which this section applies ... shall not be brought after the expiration of the period of -

(a) 6 years from the date on which the cause of action accrued; or (b) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).

16 Section 24C provides:

(1) Nothing in section 24A shall -

(a) enable any action to be brought which was barred by this Act immediately before 26th June 1992; or (b) affect any action commenced before 26th June 1992.

(2) Subject to subsection (1), section 24A ... shall have effect in relation to causes of action accruing before or after 26th June 1992.

17 The action was commenced on 14 October 1992. Accordingly, s 24C(1)(b) is not applicable. The question is whether the action for the claims

grounded on the first seizure was barred immediately before 26 June 1992, ie 25 June 1992. It is important to note that the prior period of six years, which ended on 25 June 1992, had begun on 26 June 1986. Chronologically and on the facts in our case, it is further important to note that the date 26 June 1986 straddled the period of the first seizure which lasted from 23 March 1985 to 30 April 1987.

18 The next matter to ascertain is the date when the period of limitation ran against the plaintiff in respect of the claims grounded on the first seizure. Where an action is founded on contract and the cause of action discloses a breach of contract, as in this case which involved a breach of the term for quiet enjoyment, the cause of action accrues when the breach occurs. The fact that damage may be suffered later does not extend the date on which the period of limitation begins. Therefore, in calculating the period of limitation, time runs against a plaintiff from the moment the breach of contract occurs. In contrast, in respect of the tort of negligence the cause of action does not accrue until damage is in fact sustained.

19 On the facts as found by the trial judge, the breach against the implied term to give the appellant quiet enjoyment of the car occurred on 23 March 1985 and this breach continued for just over two years and one month. There was a breach of the term every day during that period. In my view, it is not right in law to conclude that the cause of action accrued only on the first day of the first seizure which lasted for more than two years and one month. The breach occurred every day the car was not returned to the possession and enjoyment of the appellant. The daily breaches of the implied term for quiet therefore occurred before, on and after 26 June 1986. It would follow, however, that the causes of action which accrued before 26 June 1986, going back to 23 March 1985, were barred within the meaning of s 24C(1)(a) of the Act.

20 But the appellant commenced this action in the District Court on 14 October 1992. All causes of action in connection with the first seizure accruing within the period of six years before that date, ie on or after 15 October 1986 are not statute barred: see s 6 and s 24C(1)(a) of the Act. In the result, and on my analysis, the conclusion is that the causes of action which accrued on and after 15 October 1986 were not time barred. The appellant is entitled to claim against the respondents for damages by reason of the breaches of the implied term of quiet enjoyment which took place daily on and from 15 October 1986 until 30 April 1987.

21 In my view, the new s 24C(3) is of no assistance to the appellant. It provides that in non personal injury actions for negligence, nuisance or breach of duty, no action shall be brought after the expiration of six years from the date on which the cause of action accrued or three years from the date of knowledge, ***whichever is the later*** . As the trial judge had found that the appellant knew of the damage on 30 April 1987, time would have run out three years later on 29 April 1990, a date earlier than the six years allowed.

22 I turn now to the question whether the appellant had proved that the costs of repairs was \$14,401.38, which is the next issue of the appeal. The claims were for repairs to the car which became necessary because of the first and second seizures. In view of the defence of time bar, the damages to the car which required repair had to be clearly separated and identified as having been caused during the first or second seizure or, in this case, during which part of the period of the first seizure. As the period of limitation began on and from 15 October 1986, particular care had to be taken to ensure that evidence was led to show that the claims for repairs were limited to damages to the car which had occurred on and from 15 October 1986.

23 The appellant was in fact alerted to the difficulties of proof. In January 1994 the respondents sought further and better particulars of the nature of the damages and the quantum of damages attributed to each time period. In response the respondents described merely the nature of the damages suffered but not the quantum of damages in each of the time periods. There was no evidence bearing on the question as to when the damage to the car had taken place. For instance, in respect of the repairs carried out on 18 September 1987 they were more in the nature of maintenance of the car. The trial judge rightly pointed out that there was no survey report on the damages of the car after its release on 30 April 1987 or after the second release on 15 September 1987. I have to agree with the trial judge that in view of the lack of evidence it is impossible to attribute any damage to the car as having taken place on and after 15 October 1986. It therefore followed that it is also not possible to identify what repairs were carried out for what damage.

24 The appeal is accordingly dismissed with costs. The trial judge was right in awarding nominal damages as proof of the quantum of loss was not placed before the court.

Lai Kew Chai J

MP Kanisan (Palakrishnan & Partners) for the appellant
Phua Siow Choon (Michael BB Ong & Co) for the respondents
