IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 127

Suit No 1332 of 1997

Between

P T Budi Semestra Satria

… Plaintiff

And

Concordia Agritrading Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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P T Budi Semestra Satria v Concordia Agritrading Pte Ltd

[1998] SGHC 127

Suit No 1332 of 1997
Lai Siu Chiu J
20 April 1998

Judgment:

GROUNDS OF DECISION

1. This was an appeal by the plaintiffs against the decision of the assistant registrar staying all further proceedings in this action on the defendants' application under s 6 of the International Arbitration Act 1995 (Cap 143A). After hearing arguments, I affirmed the order made below but imposed terms for the stay. The defendants have now appealed against my decision (Civil Appeal No. 36 of 1998).

2. The plaintiffs as sellers and the defendants as buyers entered into two contracts of sale. The first contract dated 16 August 1996 was for the sale and purchase of 7,500 metric tonnes of Java Tapioca Chips, 5% more or less at buyer's option at a price of US$107.50 per metric tonne F.O.B. Surabaya on the terms and conditions therein stated. The second dated 28 October 1996 was for the sale and purchase of

1,500 metric tonnes of Java Tapioca Chips, 5% more or less at buyer's option at a price of US$104 per metric tonne F.O.B. Surabaya on the terms and conditions therein stated.

3. The following terms were found in these contracts:

> Arbitration: in London as per Arbitration Rules of G.A.F.T.A. no. 125 All terms, conditions and rules, contained in the current edition of contract no. 119 of The Grain and Feed Trade Association (of which parties admit knowledge and notice) shall, except so far as the same may be modified or varied above, be deemed to be incorporated in and to form part of this contract.

4. Pursuant to these contracts, the plaintiffs shipped 9,500 metric tonnes of Java Tapioca Chips on board the vessel m.v. "Gospic" from Surabaya on 15 November 1996. On the same day, there was a letter of agreement by which the following were agreed:

SELLERS confirm that they guarantee to be responsible for any claim as per contract and GAFTA 125 regarding the cargo shipped per mv GOSPIC at discharge as specified hereunder.

> Any shortage / surplus and / or quality allowances as per contract.

SELLERS instruct their Bankers to release the documents for undermentioned contracts against payment of 92.5 percent of the total invoice amount …

...

The balance of 7.5 percent of the total invoice amount to be paid by BUYERS to SELLERS after discharge in the port of destination, provided that BUYERS do not lodge a claim to SELLERS as per contract and GAFTA 125.

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In case any arbitration will be lodged the above mentioned balance amount to be settled between BUYERS and SELLERS as per the final Arbitration Award.

5. In accordance with the defendants' instructions, 6,000 metric tonnes of the cargo were discharged at Lorient, France, on 31 December 1996 and a further 3,500 metric tonnes of the cargo were discharged at Hamburg, Germany on 9 January 1997. The plaintiffs then rendered to the defendants their invoice No. 003/TC/BSS/1/97 dated 22 January 1997 for the balance 7.5% of the sale price of the cargo in the sum of US$76,068.75.

6. When no payment was received from the defendants, the plaintiffs sent repeated reminders to the defendants demanding payment of the outstanding. The defendants replied with a fax on 14 March 1997. It advised the plaintiffs that the defendants' sub-buyers Messrs Nethgrain Dreyfuss (Nethgrain) had rejected the cargo as a result of which the defendants were under arbitration with them claiming an amount in excess of US$226,875. For this reason, the defendants rejected the plaintiffs' request for payment and claimed arbitration against the plaintiffs, nominating Mr G. Bestebreurtje as their arbitrator. By their fax of 10 April 1997, the plaintiffs rejected the defendants' claim to any such right to arbitrate, relying on GAFTA 125:2 and on the fact that the cargo had been discharged at the various discharge ports in sound order and condition. This was followed by a letter of demand on 12 June 1997.

7. On 23 June 1997, a fax was sent by the defendants' associate company, Nidera to the plaintiffs' solicitors setting out in full cl 30 of contract no. 119 of The Grain and Feed Trade Association which had been incorporated into the sale contracts:

> (a) Any dispute arising out of or under this contract shall be settled by arbitration in accordance with the Arbitration Rules

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> No. 125 of The Grain and Feed Trade Association in the edition current at the date of this contract, such Rules forming part of this contract and of which both parties hereto shall be deemed to be cognisant. (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitrator(s) or a Board of Appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or a Board of Appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

8. The plaintiffs' solicitors replied on 24 June 1997 expressing the view that there was no defence to the plaintiffs' claim and the defendants were not entitled to claim arbitration given the operation of Article 2 of GAFTA 125.

9. On 3 July 1997, the plaintiffs commenced legal proceedings against the defendants in this suit. The defendants entered appearance and took out an application to stay all further proceedings pursuant to s 6 of the International Arbitration Act 1995. The defendants argued that these proceedings were a direct contravention of the clear provisions in the sale contracts. If the plaintiffs wished to proceed with their claim for the 7.5% balance of the purchase price, they must submit their claim to arbitration.

10. The assistant registrar granted the defendants' application to stay all further proceedings and the plaintiffs appealed. Before me, the plaintiffs maintained their stand that the defendants had no defence to their claim for the balance of the purchase price. The requirement of load port sampling had clearly been varied by the letter of agreement dated 15 November 1996. Under the terms of the contract as varied, it was the condition of the cargo at the discharge port which would determine the issue. It was also agreed that the balance 7.5% of

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the purchase price would be paid by the defendants after discharge in the port of destination unless they lodge a claim against the plaintiffs as per contract and GAFTA 125. Under the GAFTA Arbitration Rules 125 rule 2.1 (c), the claimant must give notice of the intention to refer a dispute to arbitration within 21 days of the date of completion of final discharge. The defendants had not only failed to disclose any survey reports pertaining to the quality or condition of the cargo at the discharge ports; they had also accepted the cargo, making only shortage claims. The notice of arbitration was given some 3 months after discharge and only after repeated reminder letters from the plaintiffs as to payment of the outstanding. According to the plaintiffs, the defendants' lack of bona fides was clearly shown by their continued refusal to disclose to the Court the documents pertaining to the alleged arbitration between themselves and Nethgrain.

11. The defence to the plaintiffs' claim was as follows. A survey was carried out by P.T. Superintending Company of Indonesia, correspondents of Societe Generale de Surveillance S.A. Geneva (SUCOFINDO/SGS) at the port of loading. SUCOFINDO/SGS reported that from the samples drawn, the cargo was found, inter alia, to be black and/or mouldy and/or contaminated. It was clear from the SUCOFINDO/SGS report that the surveyors had notified the plaintiffs that part of the cargo had been rejected by the buyers and that the rejected cargo should not be loaded. The plaintiffs were therefore aware that there were problems with the cargo at the port of loading and it was unnecessary for the defendants to give any notice of the alleged deficiencies when the cargo arrived at the ports of discharge. Due to these problems, a variation of the original contract was entered into between the parties. Clearly, the intention of the parties when they executed the letter of agreement was that the balance of 7.5% would be retained by the defendants to be set off against any losses suffered by reason of the cargo condition.

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12. The condition survey was commissioned by the sub-buyers and based on these findings by SUCOFINDO/SGS, Nethgrain rejected the goods. As a result of Nethgrain's rejection of the cargo, the defendants had lost in excess of US$226,875.00. The defendants argued that they were entitled to seek a diminution in the price of the goods and/or set off these losses from the amount claimed by the plaintiffs. Further, the shortage invoices had not been paid by the plaintiffs. This constituted a further counterclaim against the plaintiffs arising out of the same sale transaction for which the defendants were entitled to either set off or deduct from the plaintiffs' claim. The defendants submitted that they had already lodged a claim by their fax of 14 March 1997. The failure to comply with time stipulations under the applicable GAFTA rules could only be used as a defence by the plaintiffs at the arbitration. Even if such a defence was raised, it was in the arbitrator's absolute discretion whether to admit the claim. In any event, the defendants argued that their right to arbitrate their dispute was totally separate and distinct from the plaintiffs' obligation to refer their own claim to arbitration. It was incumbent on the plaintiffs, if they had a claim against the defendants, to submit their claim to arbitration in accordance with the GAFTA Rules.

13. Under s 6 of the International Arbitration Act, a stay is mandatory unless the party resisting the stay satisfies the Court that the arbitration agreement is null and void, inoperative or incapable of being performed. The Court however has absolute discretion to impose terms and conditions as appear reasonable or required by the ties of justice. In the present case, the plaintiffs claimed payment of the balance 7.5% of the purchase price. The defendants denied that they were liable for the amount claimed and refused to make payment. There was in ordinary language a dispute between the parties as to whether the amount as

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claimed was due. In the circumstances, I affirmed the order made below to stay all further proceedings but imposed terms for the stay.

14. In my opinion, there was no defence to the plaintiffs' claim save for the defendants' cross claims as to the losses they suffered by reason of the cargo condition, for which they had already appointed an arbitrator and lodged a claim against the plaintiffs by their fax of 14 March 1997. This and the plain language of the term that the balance 7.5 % was to be paid unless the defendants lodge a claim to the plaintiffs meant that logically, the defendants, rather than the plaintiffs, should be the claimants in the arbitration. For this reason, I imposed the following terms for the stay:

Until and unless the defendants have gone to arbitration as claimants against the plaintiffs under the GAFTA Rules, the defendants will furnish security to the plaintiffs for the balance sum of US$76,068.75 by way of a solicitor's undertaking from the defendants' solicitors or by way of a bank guarantee, within 14 days of this order;

Upon the matter being arbitrated, the plaintiffs shall release the security to the defendants within 3 days of notification of such arbitration;

If GAFTA refuses or rejects arbitration of the defendants' claim, then the plaintiffs are at liberty to restore their application for summary judgment under SIC 6031/97;

Costs of this appeal to abide the outcome of the arbitration. If no arbitration, costs shall be costs in the O.14 proceedings;

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Order for costs below to abide the outcome of the arbitration or failing that, the O. 14 application.

15. After I made the above orders, the defendants applied to present further arguments; I did not accede to the request. In my view, the defendants' case was that they had appointed an arbitrator and lodged a claim against the plaintiffs. This presupposes the defendants had activated the arbitration process under GAFTA 125. If so, the defendants should have no difficulty furnishing the requisite documentary proof to the plaintiffs so as to be discharged from having to furnish security for the stay granted. If they had not initiated arbitration proceedings as the plaintiffs suspected or, for some other reason GAFTA refused them arbitration on their claim, then a stay should not be granted and the plaintiffs should not have their claim delayed or denied.

Lai Siu Chiu

Judge

Lai Siu Chiu J

Muthu Arusu (Drew & Napier) for the plaintiffs
John Yap (Allen & Gledhill) for the defendants

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