IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 141

Suit 812/1994

Between

Sinotani Pte Ltd

… Plaintiff

And

The People's Insurance Co Ltd

… Defendant

GROUNDS OF DECISION

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

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Sinotani Pte Ltd v The People's Insurance Co Ltd

[1998] SGHC 141

Suit 812/1994
Christopher Lau JC
27 April 1998

Judgment:

Cur Adv Vult

1. The plaintiffs' claim in this action against the defendants is for the recovery of loss and damage they allegedly sustained on their goods. The defendants are the insurers of the goods.

2. The goods comprised 5,549 crates of medium density fibreboard ("MDF") and chipboards that had been shipped on board the M.V. "Solta" on or about 12 July 1993 at Antwerp for transhipment at Hong Kong by the direct discharge of the goods into receivers' barges and coasters. The goods were intended for Shantou in Southern China. Three clean bills of lading (numbered

1, 2 and 3 dated 12 July 1993) were issued. The defendants by a marine cover-note dated 13 July 1993 held the plaintiffs covered on the shipment against "all risks". The sum insured was US$3,850,000.00.

3. It was stated in the cover-note :

> "3.1 That the insurance was subject to cover as per Institute Timber Trade Federation Clauses ("ITTF clauses").
>
> 3.2 Any damage and/or losses is discovered at transhipment port then damage survey must be held and repair is needed before it must be carried out before transhipment arranged is made to transport the cargoes to the final destination."
>
> These stipulations were stated as a condition of the cover.

4. Upon the M.V. "Solta's" arrival in Hong Kong on or about 21 August 1993, part of the goods was found damaged. On 22 August 1993 the plaintiffs notified the defendants of the damage.

5. The defendants' survey agents - Inchcape Testing Services ("ITS") - were appointed on 23 August 1993.

6. What followed was the genesis of this claim. The plaintiffs say they requested assistance and guidance from ITS on how the casualty could be best handled to which request the plaintiffs allege they received little or no assistance and no guidance from ITS or from the defendants. Instead, they say the defendants asked the plaintiffs to act as prudent uninsured. The plaintiffs say they did. After they had obtained a better assessment of the situation and after ensuring that surveys would be done during transloading, they took the decision to tranship all the cargo (whether damaged or not) to Shantou, instead of having a damage survey done in Hong Kong by segregating the sound from the damaged goods on discharge and having the damaged goods repaired prior to transhipment as stipulated by the insurance cover. The primary reason the plaintiffs gave for adopting this course was the lack of storage space and higher costs of storage and segregation in Hong Kong. That decision however resulted in both the sound and damaged goods being commingled in the transhipment. Subsequently when the goods arrived in Shantou, they were segregated and surveyed. The quantities of sound and damaged goods were ascertained and a salvage sale of

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the goods the Chinese receivers had refused to take delivery of was made. The plaintiffs then gave Notice of Abandonment of the goods to the defendants, claiming a constructive total costs.

7. The decision by the plaintiffs resulted in expenses of US$859,248.10 allegedly incurred by them in Hong Kong and Shantou, expenses which they claim had been properly incurred for the purpose of minimising or averting the loss. That decision also allegedly resulted in a loss and damage of the goods to the extent of US$2,634,426.50. It is the plaintiffs' claim that both these sums fall within the terms of the defendants' cover and accordingly, that the defendants are liable to reimburse the plaintiffs these sums.

8. The defendants denied liability. Their case essentially was :

> 8.1 the plaintiffs have no insurable interest. The loss was not caused by a peril insured against;
>
> 8.2 the damage was partly caused by insufficiency or unsuitability of packing, an exception from liability under clause 4.3 of the ITTF clauses;
>
> 8.3 there was wilful misconduct by the plaintiffs in their failure to segregate, sort and re-pack the goods before transhipment to China, a defence under s 55(2)(a) of the Marine Insurance Act ("MIA").
>
> 8.4 the plaintiffs had failed to take reasonable measures to avert or minimise loss as required by the cover and section 78(4) of the MIA;
>
> 8.5 not all the expenses allegedly incurred by the plaintiffs for averting or minimising loss were in fact so incurred;
>
> 8.6 the plaintiffs had breached an express term/condition of the cover which required damage to be surveyed before the transhipment arrangement was made;
>
> 8.7 in breach of an express term/condition of the policy, a damage survey was not carried out before transhipment in respect of the goods laden on the coaster "Ting Jiang" voyage 9312;

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8.8 no notice of abandonment had been given. If it had, the defendants did not accept the notice. There was no constructive total loss within the meaning of section 60 of the MIA;

8.9 the salvage value of S$293,331.61 realised at Shantou was not reasonable as no reasonable effort was made to realise the maximum salvage value;

9. The issues in these circumstances are :

(a) whether the plaintiffs had an insurable interest in the cargo;

(b) whether the goods were damaged during the voyage from Antwerp to Hong Kong and as ascertained upon the vessel's arrival in Hong Kong;

(c) if the goods were so damaged, whether the damage was caused by a peril insured against;

(d) if the goods were damaged by a peril insured against, whether the defendants were liable to pay the loss and damaged suffered by the plaintiffs;

(e) whether the defendants are excused from paying the plaintiffs by reason of and/or whether some of the damaged goods were caused by :

(i) insufficiency or unsuitability of packing; (ii) wilful misconduct of the plaintiffs within the meaning of section 55(2)(a) of the MIA;

(f) whether the defendants are excused from paying the plaintiffs by reason of the plaintiffs having failed to comply with the terms of insurance in relation to sorting and re-packing before transhipment to final destination;

(g) whether the plaintiffs failed to take reasonable measures to avert or minimise the losses;

(h) whether the plaintiffs breached the terms of cover by failing to hold a damage survey or a proper survey of the damaged goods at the transhipment port in respect of the goods;

(i) whether there was an actual total loss or alternatively a constructive total loss of 3,784 crates, and whether the goods had been reasonably abandoned by reason thereof;

(j) whether the plaintiffs are entitled to claim the sums of US$2,634,426.50 and US$869,470.38 or any part thereof on account of the goods being an actual total loss or a constructive total loss or otherwise damaged;

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> (k) whether the efforts made to conduct the salvage sale were reasonable under the circumstances.

10. On the first three issues, I can shortly dispose of. The evidence was that property in the goods remained with the plaintiffs, that ‘clean’ bills of lading had been issued, that the "Solta" had encountered heavy weather during the voyage from Antwerp to Hong Kong and that on the vessel’s arrival in Hong Kong, part of the goods had been ascertained to have been damaged by sea water. There was no credible evidence that the packing was not customary, or that even if the packing was insufficient or unsuitable, that that was the proximate cause of damage. I am therefore in no doubt that the plaintiffs have shown they have an insurable interest, that the goods were damaged in the course of the voyage and that the damage was caused by a peril insured against within the terms of the "all risks" cover since "all risks" is intended to cover all losses by any accidental cause of any kind occurring during transit : see *British and Foreign Marine Insurance Co. Ltd. v Gaunt* [1921] 2 A.C. 41 at page 47.

11. The remaining issues and the real dispute between the parties turn on what the plaintiffs did and did not do and the plaintiffs say, what the defendants did not do under the terms of the insurance cover. The evidence showed that the plaintiffs knew of the conditions of cover and accepted them. This is clear from their conduct when they ascertained on 22 August 1993 that their goods were damaged upon the "Solta’s" arrival in Hong Kong and from their correspondence with the defendants in which they acknowledged, that they had to segregate the sound from the damage goods and to repair such of the goods that could be repaired prior to transhipment. In a fax dated 26 August 1993 (AB-35) that the plaintiffs sent to the defendants’ brokers Alprotec Insurance Agencies Pte Ltd, for example, the plaintiffs stated in the second paragraph :

> "As you are well aware of, the damaged cargo are being discharged into a separate barge."

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This explains and is confirmed by ITS in ITS's preliminary advice of 27 August 1993 to the defendants in which ITS said :

> "the damaged boards are being segregated to minimise the loss. The undamaged items have been transhipped to China. The damaged boards are presently stored on board four barges pending further action. We will liaise with the consignee to dispose of the boards as soon as possible to prevent any escalation of expenses."

12. In reality however and unknown to ITS and the defendants, except for about the first two days of discharge, ie. on or about 22 and 23 August 1993, the plaintiffs knew segregation of the goods prior to their direct discharge into the barges/coasters had all but ceased.

13. It was no coincidence that at about that time the plaintiffs came under severe financial pressure. The barge and coaster operators had begun to impose demurrage charges since the discharge and transloading was being delayed by the segregation exercise.

14. On 30 August 1993, Mr Chew Hua Seng, the plaintiffs' managing director therefore decided that the plaintiffs would tranship the goods without a survey, segregation and repairs being done in Hong Kong as required by the defendants' insurance cover.

15. The plaintiffs claim this decision was forced on them by the failure of ITS to carry out a proper survey of the cargo - as ITS were obliged to do under the terms of the cover - and that this decision when considering the larger picture, was prudent. The plaintiffs claimed that it was the owners of the "Solta" who had unilaterally stopped the segregation exercise and not the plaintiffs because these owners may have had other time charter commitments.

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They also claimed that their comparative study of the warehousing costs, labour transport costs, warehouse availability in Shantou and Hong Kong showed firstly that there was no available warehouse space in Hong Kong and secondly, that it was far less expensive to have all this undertaken in Shantou.

16. I did not accept these allegations. They were simply unsupported by the evidence. In *National Oil Well UK Ltd v Davy Offshore Ltd* [1993] 2 Lloyd's L.R. 582, Colman J held (at page 622 column 2) the following to be the essential elements of wilful misconduct under section 55(2)(a) of the MIA :

> (i) where there was reckless indifference to the loss or damage by the insured;
>
> (ii) where the immediate purpose of the insured was to claim on the insurers or that the insured subsequently advanced a claim.

I respectfully adopt Justice Colman's views.

17. Was there wilful misconduct by the plaintiffs ? I think there was. In transhipping the goods to Shantou without a proper survey and segregation, the plaintiffs must have known or ought to have known that it would not be possible to properly quantify a claim against the "Solta", for the portion of the damage found at Hong Kong. They were aware that the Chinese buyers had already rejected the goods as these buyers had told them as early as 27 August 1993 that they would not accept the goods. Yet they claimed in their telex of 1 September 1993 to the defendants, a claim which I find to be untruthful, that they had "only authorised the transhipment after completing the damage survey in Hong Kong". ITS had certainly not yet done their survey and the surveyors the plaintiffs had appointed - Scanner Marine - certainly also had not. Scanner Marine had only been appointed the day before - on 31 August 1993 - and Andrew Moore, another surveyor whom the plaintiffs had appointed on 28

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August 1993 had only attended on the vessel to do a survey for the purpose of providing an assessment of the cause of damage. The Chinese buyers had repeated their rejection to the plaintiffs on 31st August 1993 (PBD-124). The plaintiffs also admitted they knew that the damaged goods would be of no use to the original user for the original purpose and they had also been advised by Andrew Moore through a copy of a letter to Scanner Marine (PBD-301) of "inevitable damage" resulting from "multiple handling of cargo", yet they took no notice of this advice and continued to tranship the goods. No evidence of a comparative analysis of costs in Hong Kong and China was adduced and the plaintiffs themselves realised as did Mr Chew Hua Seng (Notes of Evidence 56 A - D) that the damaged cargo at Shantou "would have no or little value" and no arrangements at the time had been made on the disposal of the cargo in China. The plaintiffs' attitude therefore was one of reckless indifference. It

showed, since the plaintiffs had been advised about the inevitability of further damage and knowing that the cargo would have little or no value at Shantou, that the plaintiffs' intention was to make a claim on their insurers.

18. The plaintiffs had also breached the condition of the cover requiring survey and segregation in Hong Kong. Such a condition which amounts to a warranty under the MIA "must be exactly complied with" - section 33(1) MIA and the failure to comply discharges the insurer from liability as from the date of breach of the warranty.

19. The plaintiffs had also failed to act as prudent uninsured. They had failed to take reasonable measures to avert or minimise the loss. There was no credible evidence that it was the shipowners who had stopped segregation or that shipowners had refused to cooperate. There was no reason why the survey and segregation could not have been done in Hong Kong before transhipment.

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20. The plaintiffs had decided to tranship to China, in breach of the condition of cover for the reason simply, as Mr Chew Hua Seng claimed in his telex of 1 September 1993 to the defendants :

"…it was cheaper to manage the matter from there."

But the subsequent events show starkly the utter folly of that decision. As Mr Chew Hua Seng admitted in evidence :

> (a) damaged goods which had a sound value of US$2,924,747.54 were to be sold for a salvage value of only US$182,818.08 or 62.5% of its original value;
>
> (b) total cargo (sound and damaged) with an original value of US$3,856,267.30 was sold for a total only of US$1,114,337.84;
>
> (c) the plaintiffs had spent US$824,495.31 extraordinary expenses (for which they claim recovery from the defendants) to bring the sound and damaged cargo to Shantou to realise a recovery of US$1,114,337.84 - ie. for every dollar of recovery, 74% constituted the costs of recovery.

21. There was also no basis for a claim for constructive total loss of 3,784 packages of goods or of any of the goods at all. No notice of abandonment could have been given after the goods had been transhipped to their final destination. The decision to abandon had to be made at Hong Kong immediately after the plaintiffs had obtained sufficient information on the costs of transhipping to Shantou, and its likely consequences. It was not open to the plaintiffs to wait until the whole transhipment exercise has been completed, and after knowing the true situation, then give notice of abandonment : see *Templeman on Marine Insurance* (6th Edn.) at page 217.

22. To surmount the condition in the insurance cover requiring damage and segregation, the plaintiffs claimed because neither the defendants nor ITS had insisted that the damage survey be held in Hong Kong on being told that the

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cargo was being shipped to Shantou and agreeing thereafter to carry out a survey in Shantou, that the defendants are estopped from relying on this condition. I cannot however see how I can accept such a submission. There is simply no evidence to support it.

23. In the result, the plaintiffs' claim succeeds only in one respect and that is in relation to that portion of the goods that can be ascertained as damaged upon discharge in Hong Kong from the "Solta" and the expenses incurred in Hong Kong with respect to that part of the goods such as survey expenses, storage and handling pending sale and disposal. The burden is on the plaintiffs to prove that these expenses were necessary and reasonable within the terms of the cover.

24. What was the damage upon discharge at Hong Kong ? The plaintiffs' cargo consisted of MDF and chipboard. The ship's Exception List (exhibit PSR-93) which was referred to during the proceedings and which I refer to in this judgment as "the Coinrate Exception List", identified approximately 24.5% damage to the cargo upon discharge from the "Solta".

25. The Coinrate Exception List is dated 30 August 1993. It was signed by three firms of surveyors, two of which, Simon Chan (PW4) the plaintiffs' surveyor from Scanner Marine agreed are as reputable and professional as his company. Each of the three surveyors represented different interests but I would have thought each firm would either have refused to sign this List or only signed with added remarks had the List been inaccurate. Simon Chan himself said that is what he himself would have done. The three surveying firms were Masson Surveyors (HK) Ltd who represented the stevedores, Carmichael & Clarke who represented the charterers, and Allied Marine Consultants who represented the owners' P & I Club. Not one of the three made any remarks on the Coinrate

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Exception List. The List listed a total of 1,360 crates with discrepancies upon discharge.

26. There were two other survey reports. They showed a higher percentage of damaged goods - about 34%. However neither ITS's nor Scanner Marine's survey was based on a survey upon discharge from the "Solta". Scanner Marine's survey was conducted on the cargo whilst they were already in the barges and during transloading operations from the barges to the coasters, a day after discharge from the "Solta" had been completed. As for ITS, they were not present during the entire discharge operation. The salvage sale results are also not indicative of the actual damage on discharge from the "Solta" since the sale was of the goods in Shantou.

27. The plaintiffs in fact appear to have relied on this Coinrate Exception List in making their decision to tranship the cargo to Shantou. Chew Hua Seng said he had made the decision to tranship on 30 August 1993 and when the plaintiffs also wrote a letter on 31 August 1993 (PBD-131) to Hoson Shipping (the transhipment contractors) saying :

> "Please also provide us a copy of the survey report made during the acceptance of the cargo discharge from MV Solta"

the plaintiffs could only have been referring to the Coinrate Exception List since at that date, neither ITS nor Scanner Marine had produced any report yet.

28. Further the very next day, 1 September 1993, the plaintiffs telexed the defendants, saying that they "only authorised the transhipment after completing the damage survey in Hong Kong". This could, again only be a reference to the Coinrate Exception List. It indicated that the plaintiffs themselves must have at that time accepted this List as an accurate survey of the extent of the loss/damage before transhipment to Shantou.

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29. In the circumstances, I find for the plaintiffs on the first three issues. The question then is what is the amount of the indemnity the plaintiffs are entitled to ? I have already decided that the loss is to be calculated with reference to the Coinrate Exception List.

30. I am in some difficulty however in calculating what the amount of the judgment should be since the MDF and the chipboard have different values and there is inadequate evidence of the value of the damaged cargo. However since the Coinrate Exception List does indicate which damaged packages are covered by which bill of lading and the bills of lading in turn indicate what type of cargo was shipped under them, the parties should be able to adduce evidence of value before the Registrar. The orders I will therefore make are :

> (i) there will be judgment for the plaintiffs
>
> (a) in respect of the loss and damage to their goods in a sum to be assessed by the Registrar, such assessment to be based on and limited to the Coinrate Exception List; (b) for such of the extraordinary expenses incurred by the plaintiffs as were necessary and reasonable in minimising or averting the loss within the terms of cover; such expenses to be also assessed by the Registrar;
>
> (ii) interest thereon to be also assessed by the Registrar; and
>
> (iii) costs to the plaintiffs of the action to be taxed, if not agreed.

Dated the 27th day of April 1998.

CHRISTOPHER LAU JC

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Christopher Lau JC

Thomas Tan for the plaintiffs
Yang Lih Shyng for the defendants

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