IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 362

Suit 458/1998

Between

Convergent Systems (S) Pte Ltd

… *Plaintiff*

And

Taiyotech (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Bills of Exchange and Other Negotiable Instruments — Cheques; Evidence — Witnesses

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

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Convergent Systems (S) Pte Ltd and Others v Taiyotech (S) Pte Ltd and Others

[1998] SGHC 362

Suit 458/1998
Choo Han Teck JC
04 November 1998

1 : The first defendant was a company incorporated in 1994 and carried on the business, inter alia, of selling computer products and the maintenance and repair of computer hardware in premises at [num]06-19 and [num]06-53 Sim Lim Square. The second defendant is 30 years old and is a shareholder and director of the first defendant. The third defendant aged 26, is his wife. She is also a shareholder and director of the first defendant. Prior to the incorporation of the first defendant in July 1994 the second and third defendants carried on the business as a partnership from 1991.

2 The 13 plaintiffs are also in the business of selling computer products. All but three of them carry on business in their shops at Sim Lim Square. The 13 plaintiffs had been selling computer products to the first defendant for various lengths of time. Some of them had been doing business with the first defendant since 1994 and some from 1997. All their witnesses testified that they had no problems with payment from the first defendant until the period in question, namely, November 1997 to February 1998.

3 This action was brought by the plaintiffs against the defendants because the first defendant failed to make payment for some purchases made by it from the plaintiffs. Counsel for the plaintiffs presented the plaintiffs` case as follows. During the period between November 1997 and February 1998 the plaintiffs delivered goods to the first defendant at the request of the second and third defendants, both of whom knew or ought to have known that the first defendant had insufficient money to pay for them. Furthermore, cheques issued by the first defendant in payment of some of the goods were dishonoured either because of insufficient funds or payment was stopped by the second or third defendants. By reason of these facts, the plaintiffs sued the defendants on the dishonoured cheques, and against the second and third defendants for fraud. The particulars of fraud lie in the allegation that the second and third defendants purchased and took delivery of goods when they knew or ought to have known that the first defendant had insufficient funds in its bank accounts, and by the purported payment through cheques which were dishonoured.

4 The second and third defendants deny the allegation of fraud and say that they purchased the goods in the normal course of business and were given the usual credit by the plaintiffs. In some cases, they had 30 days credit, in others, 45 or 60 days. They only had difficulty making payments during the period from November 1997 to February 1998 for two reasons. First, a printed note, which was circulated throughout Sim Lim Square, alleged that the first defendant was among a list of companies which were having financial problems and cannot pay their debts. This precipitated many suppliers to hurry them for payment. It mattered not that one or two of the plaintiffs were themselves named in the circulated list. It may well be that the others who were not named started the rush for payment. The second defendant testified that sometime in December 1997 when perusing his computer records he noted that there was a

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total of $440,000 due from his customers. The total which the plaintiffs obtained judgment in default against the first defendant was $357,954.72, less than the first defendant`s total assets. Furthermore, he said that the first defendant had sufficient stock-in-trade to complement the receivables. The second defendant appeared to be a simple and unassuming witness whose evidence I accept. Mr Kok sought to discredit the second defendant`s evidence that he noted that there were $440,000 due to the first defendant in December 1997 by an ad hoc accounting of the first defendant`s assets and liabilities. This was an unsatisfactory approach. In this case the records were not available for the reason, which I accept, that a material part of it had been lost during the plaintiffs` raid on 24 February 1998. The figures relied on by Mr Kok may not be complete or accurate. No meaningful accounting can be achieved without the proper records.

5 Secondly, the first defendant`s customers were also not paying promptly at that time. Nonetheless, the second and third defendants thought that they could pay because they had assets in the form of stock-in-trade and debts due to them from their customers. The combination would be sufficient to pay the plaintiffs. However, some of the plaintiffs made it impossible for them to do so when they raided the first defendant`s shop and helped themselves to whatever they could find. This incident took place about 5.30pm on 24 February 1998 and some useful facts about it were made known at trial by Lee Choon Beng, the third defendant`s brother who was also employed as a maintenance worker for the first defendant.

6 Lee Choon Beng`s evidence was that on 24 February 1998 he was servicing a computer for a customer at unit [num]06-19 when his colleague who was at unit [num]06-53 called and told him that a group of suppliers were

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about to take away the company`s goods and that he should go over. Lee Choon Beng went to unit [num ]06-53 and saw the boss of the twelfth plaintiffs and also representatives from the first plaintiffs. They demanded payment failing which they would take away the first defendant`s goods. Lee Choon Beng and his colleague, who were the only two employees of the first defendant present, protested that the plaintiffs could not do that, but their pleas were ignored and the plaintiffs began to help themselves to goods in the shop. Lee Choon Beng stated that at that point, 20 to 30 people rushed in, as if on cue, and removed the first defendant`s stock-in-trade as well as their own office equipment including their $16,000 photocopying machine and computer server housing the first defendant`s sales and payment records. Lee Choon Beng and the third defendant also testified that money from the first defendant`s cash box was also missing after the raid. More importantly, a box containing the file of the first defendant`s invoices to its customers was also missing. This exacerbated the defendants` efforts in collecting their debts. It was not disputed that in addition to the first and twelfth plaintiffs, the fourth, eighth and eleventh plaintiffs also participated in what their counsel described as `the self-help incident`.

7 Mr Kok for the plaintiffs submitted that it was not put to the plaintiffs` witnesses that the goods were taken without consent. This omission, in my view, was not materially prejudicial to the plaintiffs. They received letters of demand for the return of the goods within three days of the incident. The letters written by the first defendant`s solicitors alleged that the goods were `forcibly removed` against the defendants` `strenuous resistance` were quickly sent to the plaintiffs involved. The plaintiffs concerned replied claiming that the goods were taken with consent. These letters were admitted in evidence by the plaintiffs. The plaintiffs` affidavits of evidence-in-chief averred that the goods were taken with consent. They had been served with the affidavits of the second and third

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defendants and that of Lee Choon Beng. The plaintiffs` case was put to Lee Choon Beng and that case was that in the absence of the second or third defendants Lee had ostensible authority to give consent, and he did so by taking out the blank delivery forms telling the plaintiffs that `they could take the goods if they fill out the delivery order`. This was denied by Lee. The importance of putting a matter to a witness is to ensure that the witness or the party concerned would not be caught by surprise. The only prejudice here, if at all, was the missed opportunity for the court to hear the plaintiffs` witnesses` account for the purpose of evaluating whether their version was more probable than that of Lee`s. This factor would have to be considered together with the evidence already set out in their affidavits of evidence-in-chief and the general demeanour in the course of cross-examination, as well as such inferences as may be drawn from the totality of the evidence. The first plaintiffs eventually surrendered the goods to the police. If the goods were taken with consent, why would they surrender them to the police? When asked, Mr Kok replied that the first plaintiffs `felt something amiss so they reported to the police and surrendered the goods [to them]`. A fair inference is that they must have realised, unlike the others, that their conduct was unlawful, and they might be exposed to serious criminal sanctions should they continue to retain the goods.

8 Lee impressed me as a forthright witness. He may be the brother of the third defendant, but I am satisfied that he gave his evidence truthfully. When it was suggested to him by Mr Kok that he had told the plaintiffs, when they were removing the goods, to leave some behind for him since he had also not been paid his salary for two months, he readily concurred, but explained that it was a desperate but vain effort to retain some goods for his employers. It was disputed by Mr Kok that there was no proper accounting of the goods taken by the plaintiffs. First, when the goods were taken out, no record was made as to what

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items were taken by whom. A list was subsequently given by some of the plaintiffs but that was done after the goods had left the defendants` shop. When some of the goods were sold, there was no record of the sales save the plaintiffs` own proclamation of the total sum received from the sales. No receipts were produced.

9 The third defendant testified that contrary to an existing practice between the plaintiffs and the defendants, plaintiffs presented the cheques for payment without checking with the defendants whether there were sufficient funds. The third defendant testified that from the time the first defendant started business with the plaintiffs, she had established the practice with them through their accounts clerks that the plaintiffs do not present the first defendant`s cheques for payment before checking with her to see if there were funds. She said that most of the payments were by post-dated cheques and sometimes because of late payments by her customers her funds may be late in coming. Thus, to avoid having to re-present the cheques the plaintiffs would present them when the third defendant confirms that the funds were in. Some of the plaintiffs called their accounts clerks to deny this practice. However, I am inclined to believe the third defendant. Her explanation seemed reasonably plausible, and on the whole, I accept her as an honest witness. Like her husband the second defendant, she did not appear to fully understand certain aspects of accounting, but she knew what the company was doing and what funds they could expect. I find that the cheque payments were made in the ordinary course of business that the first defendant had been conducting all the while.

10 The plaintiffs` evidence was that the goods would be delivered shortly after the orders were made, and a cheque would be given in payment straightaway. According to the plaintiffs, in many instances, the payment terms

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were cash on delivery. However, the defendants had shown, by the invoices and payment vouchers, that even though the invoices might have stated `COD`, in practice, the defendants paid by post-dated cheques of 30 days or more. In such circumstances, the plaintiffs must prove that the defendants had reason to believe that they would have no funds to pay them. Mr Kok submitted on an analogy with the facts in **DPP v Ray** [1974] AC 370. That was a case of four men who ran out of a restaurant without paying. I can see no semblance with the present case. The defendants in the present case did not run away with the goods they ordered from the plaintiffs. The goods were still in their shop, payment was made by post-dated cheques as was the business practice between them. The plaintiffs acknowledged that they had been doing business with the defendants for many years with no complaint. There was no evidence that the orders placed by the first defendant during the relevant period were inordinately large or under any exceptional circumstances. It is axiomatic that when a person tenders a cheque in payment he is representing that the cheque will be honoured, and it follows, the implied assertion that there will be funds in the bank to pay out. Hence, the oft quoted statement of Goff J in **R v Gilmartin** [1983] QB 953[1983] 2 WLR 547 is not an expression of some exceptional principle of law. The foundation of fraud is still deception. Gilmartin deceived his suppliers into delivering goods to him in exchange for cheques which Gilmartin knew would not be honoured because the account was empty and he had not put it in fund. Furthermore, he took the goods and absconded. He subsequently sold the goods, and obtained payment by cash cheques instead of cheques payable to Friendship Card Co Ltd, the name of the company through which he had carried on business. He was subsequently arrested and charged for obtaining property by deception, particularised as representing that the cheque he tendered in payment was good. His counsel argued that no such representation could be inferred by the mere fact of giving a post-dated cheque. The remark of Goff J

was a direct response to this submission, which was naturally rejected by the learned judge.

11 Mr Kok referred to some cheques which were dishonoured because the account was closed. The first defendant had two bank accounts. One was with the Development Bank of Singapore (`DBS`) and the other with the Industrial Commercial Bank (`ICB`). The DBS account was closed on 9 February. The third defendant also had a personal account through which she made out some cheques which were dishonoured because the account was closed. The third defendant`s evidence which I accept was that so far as the DBS account was concerned, it was originally intended to be closed on 16 February 1998 but subsequently she was informed by the bank that the account would be closed sooner on 9 February. Thus some of her post-dated cheques dated 11 and 27 February made out a month before would not be honoured. She then spoke to the plaintiffs` representatives and told them not to present the cheques for payment and she would give them fresh cheques from another bank. The plaintiffs` witnesses denied this. I am more inclined to believe the third defendant not only by the way she impressed me generally as an honest witness, but the incontrovertible documentary evidence which supports her version. For example, one DBS cheque which was dishonoured on 11 February because of the closure of the account. However, on 27 February the first plaintiffs presented two more cheques under the same account. Naturally they were dishonoured. I am inclined to believe that the plaintiffs had been told by the third defendant not to present those cheques. In respect of the personal cheque that the third defendant gave, her evidence was that she was pressed by the thirteenth plaintiffs` representative to give him a personal cheque `as a symbol of faith` until she was able to replace it with a company cheque. She did so on the understanding that her personal cheque would not be presented. The thirteenth

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plaintiffs had a different account but that was based on an alleged agreement between the third plaintiff and their Christopher Toh Beng Hoe, but Christopher Toh was not called to testify.

12 In a case of this nature it was incumbent upon the plaintiffs to prove to the satisfaction of the court that the defendants deceived the plaintiffs by purchasing goods knowing that the plaintiffs would not be paid, or at least ought to have know that the plaintiffs would not be paid. That is a burden they must discharge not merely on a balance of probabilities since the crux of the claim is based on fraud. On the evidence, I do not think that they had proved their case.

13 For the reasons above, I dismiss the plaintiffs` claim with costs to the defendants to be agreed or taxed.

14 **Outcome:**

15 Plaintiffs` claim dismissed.

Choo Han Teck JC

Kok Mun Loon and Jill Tan Li Ching (Engelin Teh & Young) for the plaintiffs
Bernard Chao Wee Chun (Chung Tan & Partners) for the defendants

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