IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 227

SCA 8/1999

Between

Seino Merchants Singapore Pte Ltd

… *Appellant*

And

Porcupine Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Bailment — Bailees; Civil Procedure — Appeals

Version No 1: 20 Nov 2026 (01:16 hrs)

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Seino Merchants Singapore Pte Ltd v Porcupine Pte Ltd

[1999] SGHC 227

SCA 8/1999
G P Selvam J
31 August 1999

1 : This is a small claims appeal from the Small Claims Tribunal.

2 The appellants, Seino Merchants Singapore Pte ltd, carry on business as freight forwarders. They lodged a small claim for the sum of $289.20 in respect of delivery charges. They delivered a consignment of Australian wine which was imported by the respondents, Porcupine Pte Ltd. The consignment comprised 72 bottles in seven boxes. The respondents lodged a counterclaim for $4,831.80. The tribunal awarded the appellants` claim as well as the respondents` counterclaim. The amount awarded on the counterclaim was $3,882.90. The appeal was made only in respect of the award on the counterclaim. It arose in these circumstances.

3 The appellants assumed the responsibility of attending to the clearance of the goods from the airport. It was common ground that they were not appointed by the respondents to perform that function, as there was no contract between the parties as regards the clearance and handling the consignment. For the purpose of clearance the appellants needed an authentic invoice. The respondents furnished them with an invoice but it was not acceptable to the

authorities. So they had to obtain an authentic copy from Australia, the country of origin of the wine. In the meantime, due to no fault of the appellants, the wine remained in their possession for ten days. During those ten days it was not kept in cold storage but left standing in an ambient temperature, that is between 28 C and 30 C. The respondents` complaint was that the wine was warm. They said that during the ten days it ought to have been left in a cold room. So, the respondents alleged the wine was damaged. Hence the counterclaim.

4 The respondents called an expert on wine to expound their case. The opinion of the expert was that wine kept at normal (non-aircon) temperatures would become very `warmed up`, almost equivalent to `cooked` wine. In a short spell of two to three weeks the wine would be oxidized. Oxidization meant that the wine would dry up, air would go in and the wine would evaporate completely and be `spoilt`, in layman`s term. Because of differences in the climatic conditions, the wine would become imbalanced and would not be ideal for consumption. At room temperature, the wine would react. When drunk within two to three days wine would pick up more alcohol than fruits. Within two to three weeks, the wine would be unconsumable. After ten days the wine would go bad.

5 In the grounds of decision the Tribunal stated that `the main issue which arose out of the counterclaim was whether the claimants (appellants) caused the damage to the wine as received by the claimant.` The Tribunal found that the `claimant was negligent in the handling of the wine and had caused damage to the wine belonging to the respondent.`

6 ***The appeal***

Version No 1: 20 Nov 2026 (01:16 hrs)

7 A hearing before the Small Claims Tribunal, though judicial, is not governed by the usual forensic procedures or rules of evidence. There are no pleadings. Advocates are not allowed to appear before the Tribunal. The proceedings are informal. There can be no appeal against the factual findings of the Tribunal. Section 39(2) of the Small Claims Tribunals Act (Cap 308) (`the SCTA`) provides that `the High Court may not reverse or vary any determination made by the Tribunal on questions of fact or receive further evidence.` This is a reiteration of s 38(1) of the SCTA which provides that an appeal may be made on any ground involving a question of law. The objective is to ensure that the Tribunal acts on correct principles of the law. otherwise decisions would become idiosyncratic and impulsive. No civilised system of law can permit judicial decisions to be made without a correct understanding of the law.

8 The principle of confining appeals to questions of law is borrowed from the Arbitration Act (Cap 10). Section 28 of the Arbitration Act provides that `an appeal shall lie to the Court on any question of law arising out of an award`. Further, the restriction of appeals to questions of law is based on the concept that the first and fundamental function of an appellate court is to settle the law and to state it in a sensible form. This is to enable the resolution of future disputes on the basis of established rules and principles of law based on legal reasons. In other words, the appeal is not a rehearing as is an appeal under the Rules of Court. In ***Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd*** (OM 42/92), I explained that the meaning and effect of the expression `an appeal on a question of law`. That decision was not reported. So I shall redact here what I said:

> *An appeal to the High Court from an arbitration award is possible provided a question of law arises out of the award. A question of law means a point of law in controversy which has to be resolved*

Version No 1: 20 Nov 2026 (01:16 hrs)

> *after opposing views and arguments have been considered. It is matter of substance the determination of which will decide the rights between the parties. The point of law must substantially affect the rights of one or more of the parties to the arbitration. If the point of law is settled and not something novel and it is contended that the arbitrator made an error in the application of the law there lies no appeal against that error for there is no question of law which calls for an opinion of the court. An application for leave to appeal on the ground that the appeal invokes a question of law must therefore clearly present the question of law on which the court`s opinion is sought and should also show that it concerns a term of the contract or an event which is not a one-off term or event - See* ***Pioneer Shipping v BTP Tioxide (The Nema)*** *[1981] 3 WLR 292.*

9 In this appeal, the petition enumerated some 20 complaints. Each complaint asserted that the Tribunal erred on some point. Almost all of them were in respect of factual determinations. When I pointed out this aberration, counsel for the appellants sought to justify her course of action on the basis of r 25(2) of the Small Claims Tribunals Rules. This rule requires every petition to `contain concisely and under distinct heads particulars of the matters in regard to which the tribunal is said to have erred.` According to counsel this provision opened the door for her to rely on all errors, errors of law as well as errors of fact. To my mind the rule is not worded satisfactorily. It is a modified version of a provision of the Rules of Supreme Court 1957 as to the contents of a memorandum of appeal. Rule 25(2) should have made it clear that the grounds in the petition of appeal must spell out the precise question of law. However, it is clear that an appeal must be related and confined to an error on a question of law. Otherwise the purpose of the SCTA would be defeated.

10 Counsel nevertheless raised a ground based on a question of law. It was whether the Tribunal appreciated and applied the correct nature and standard of duty imposed on a freight forwarder, or more properly a `cargo clearing agent`. That is a question of law which would affect all such agents. I therefore permitted the appeal to be argued on that question of law.

Version No 1: 20 Nov 2026 (01:16 hrs)

11 Having heard submissions I now state the law. It was common ground that the appellants were bailees of the wine when it came into their possession. The basis of bailment and the liability of a bailee is well-settled. The essence of the law was stated by Lord Denning MR in **Building and Civil Engineering Holidays Scheme Management Ltd v Post Office** [1966] 1 QB 247 at pp 260-262:

> *At common law, bailment is often associated with a contract, but this is not always the case ... An action against a bailee can often be put, not as an action in contract, nor in tort, but as an action on its own, sui generis, arising out of the possession had by the bailee of the goods. ... If goods, which have been delivered to a bailee, are lost or damaged whilst in his custody, he is liable to the person damnified (who may be the owner or the bailor) unless the bailee proves that the loss or damage is not due to any fault on his part. ...*

12 An important point to be derived from the above is that the bailee is liable only for loss or damage of the goods which come into the custody of the bailee. inherent vice or deterioration of quality, in law does not amount to loss or damage. That is the position when a duty to take care is imposed by tort or contract or bailment. It is not the law that a bailee is liable even though he is not at fault.

13 Next, in the last century it was fashionable to speak of an ordinary bailee being liable only for `gross negligence`. Even then, gross negligence was no more than ordinary negligence. The true proposition of law was stated by Willes J in **Gill v General Iron Screw Collier Co** [1866] 1 LRCP 600 at p 612:

> *Gross negligence is ordinary negligence with a vituperative epithet. A bailee is only bound to use the* ***ordinary care*** *of a man, and so the absence of it is called gross negligence. A person who undertakes to do some work for reward to an article must exercise the care of a skilled workman, and the absence of such care in him is negligence. [Italics added.]*

Version No 1: 20 Nov 2026 (01:16 hrs)

14 The standard of duty that is imposed is ordinary care and not expert care unless expressly required. See **Houghland v Rr Low (Luxury Coaches) Ltd** [1962] 1 QB 694 and **Port Swettenham Authority v TW Wu & Co (M) Sdn Bhd** [1979] AC 580. Excepting obvious cases, if a standard of special care is expected there must be a stipulation to that effect or there must be a selection of a person who professes a higher standard of skill.

15 In this case counsel for the respondents conceded that the alleged deterioration of the wine was inherent vice. there was, therefore, no loss of or damage to the wine. The integrity of the wine and the bottles were not affected. If the wine had to be kept at low temperatures, there ought to have been a stipulation to that effect. The handling information space in the airway bill in question contained only one instruction: `Please notify consignee immediately upon arrival`. There was no instruction that the wine should be in cold storage in the event of delivery being delayed. In the circumstances, as a matter of law and in the exercise of ordinary care the appellants were not negligent or in breach of their duty as bailees by storing the wine in ambient temperatures.

16 The Tribunal did not state the applicable law. It appeared that the strict standard applicable to insurers was postulated and applied by the Tribunal.

17 I therefore allowed the appeal with costs fixed at $1,000.

18 **Outcome:**

19 Appeal allowed.

Version No 1: 20 Nov 2026 (01:16 hrs)

G P Selvam J

Roslina Baba and Lam Wei Yaw (Ramdas & Wong) for the appellants
Michael Lai (Colin Ng & Partners) for the respondents

Version No 1: 20 Nov 2026 (01:16 hrs)