STL Machinery Pte Ltd v Hai Leck Marine Contractor Pte Ltd
[2000] SGHC 112

Case Number : Suit 1592/1999, RA 600040/2000
Decision Date : 21 June 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Leong Kah Wah (Joseph Tan Jude Benny) for the plaintiffs/respondents; Tan Chau Yee (Tan Cheng Yew & Partners) for the defendants/appellants
Parties : STL Machinery Pte Ltd — Hai Leck Marine Contractor Pte Ltd

JUDGMENT:

GROUNDS OF DECISION

The parties

1. The plaintiffs STL Machinery Pte Ltd are the owners of 2 units of crawler cranes and 8 units of tower cranes which they wanted to ship to Manila, Philippines to a company known as Singapino Corporation.

2. The defendants Hai Leck Marine Contractor Pte Ltd are a shipping company which arranges the shipment of cargo for their customers.

3. The plaintiffs enquired with several shipping companies on the shipment of the cranes before narrowing their negotiations to the defendants. Eventually a contract was entered between them on 29 July 1999.

4. The terms of the agreement on which the action turns relate to the terms on the cargo and freight. The former was described as "2 x 35 ton Crawler Crane & 8 x Tower Crane (as per your Packing List – approx.1700 m^3)." The latter was stated as "Lumpsum US$51,000/- Liner Term (Door/Port)."

The difficulties arising

5. The cranes were transported from the plaintiffs' yard to the port by 3 August 1999. The plaintiffs prepared a packing list dated 2 August for their internal records, giving the measurement of the cranes as 2,261.14 cubic metres.

6. The cranes were loaded on the vessel MV Royal Progress on 6 August, upon which a bill of lading was issued naming Singapino Corporation as the consignee.

7. After the vessel arrived at Manila on 14 August the defendants failed to release the cranes to the consignee because of a dispute over the measurement of the cranes, and the defendants' non-payment of the freight to the shipowners.

8. The defendants had declared the measurement of the cranes as 1400 cubic metres, whereas the master found it to be about 4000 cubic metres. The shipowners ceased discharging the cargo on 15 August and exercised their lien on the approximately one-third of the cargo that was still on the vessel.

9. To resolve the impasse and to get possession of the cranes, the consignee negotiated directly with the shipowners and secured the release upon a payment of US$37,596.75. Subsequently they made a claim on the plaintiffs for

(i)	Loss of Use of the cargo	US$125,000.00	= S$210,000.00

(ii)	Payment made to secure the release of the cargo	US$37,596.75	= S$63,162.54
(iii)	Additional storage charges	US$16,710.93	= S$28,074.36
(iv)	Overtime charges to discharge the cargo	US$142.59	= S$239.55

The dispute over measurement

10. The defendants claimed that the plaintiffs misrepresented the total volume of the cranes to be about 1400 cubic metres, and that the volume was stated as 1700 cubic metres in the contract to give the plaintiffs a margin of safety.

11. When they made their own measurement before loading on 4 August they found the total volume to be approximately 3077 cubic metres.

12. The defendants also relied on the report of a survey carried out by surveyors appointed by the consignee in Manila, which showed the volume as 3,323.23 cubic metres. The plaintiffs denied that they were guilty of misrepresentation, and contended that freight was agreed on a lumpsum basis.

The dispute over the disclosure of the consignee and the lease

13. The plaintiffs asserted that they had informed the defendants that the cranes were being leased to Singapino Corporation. The defendants, on the other hand, alleged that they were not informed of the lease or the identity of the consignee before the commencement of the legal proceedings.

14. The documents exhibited by the plaintiffs contradicted the defendants' denial of knowledge of the consignee. The bill of lading for the shipment named Singapino Corporation as the consignee and a letter from the plaintiffs to the defendants dated 19 August specifically referred to Singapino Corporation as the consignee.

The plaintiffs' claims

15. The plaintiffs asserted that they had paid the consignee the sums in items (ii), (iii) and (iv) in paragraph 9 and that they were in the process of making payment of the sum under item (i). They also added a further item for $3,258.78 which they claimed they had incurred on their own as administrative, travelling and accommodation expenses arising out of the delayed release of the cranes.

16. They claimed against the defendants (i) a declaration that they were entitled to be indemnified by the defendants against their liability to the consignee, (ii) an indemnity in the sum of $301,476.43 (the full amount claimed by the consignee), (iii) damages in the sum of $3,258.78, or alternatively damages to be assessed, (iv) interest and (v) costs.

The Assistant Registrar's decision

17. The plaintiffs applied for summary judgment on their action. This came on for hearing before an Assistant Registrar. After hearing counsel the Assistant Registrar gave judgment to the plaintiffs in terms of prayers (i) to (v) of the plaintiffs' claims without specifying whether the damages were fixed at $3,258.78 or were to be assessed.

18. The defendants appealed against the whole of the Assistant Registrar's judgment.

The issues raised before me

19. In the appeal counsel for the defendants submitted that

> Defendants' case is that (i) *Plaintiffs misrepresented the volume of cargo* to the Defendants prior to the execution of the contract, and that relying on the volume as represented by Plaintiffs, Defendants informed the carrier/shipowner of that volume. Upon discharge, (ii) *the carrier* discovered that the true volume was much greater than that told to them and *exercised a lien on the cargo*. (iii) *The Plaintiffs were also late in their payment of freight*. (Emphasis and numbering added)

Examination of the issues raised

20. There were three issues raised – misrepresentation, lien and late payment of freight.

21. On the issue of misrepresentation, the defendants claim to have discovered the misrepresentation before the cranes were loaded. They did not rescind the contract, and continued with it. In these circumstances, even if there was a misrepresentation, the contract continued to subsist and the defendants were bound by their covenant to discharge the cranes to the consignee.

22. On the lien issue, the shipowner had exercised its lien because no freight payments were made to them. The defendants had misstated that the lien was exercised for non-payment of the excess freight payable on the excess volume. The defendants' reliance on the lien was unfounded because it was their duty to pay freight to he shipowner. While the lien resulted in their inability to release the cranes to the consignee, it did not displace their obligation to release the cranes or excuse the non-compliance.

23. On the late payment of freight, while it was not disputed that the plaintiffs were late when they tendered the freight payment to the defendants, the defendants loaded and shipped the cranes and accepted the late payment. In these circumstances, the late payment did not justify their failure to release the cranes.

My decision

24. The defences raised did not excuse the defendants from their obligation to deliver the cargo to the consignee, and the plaintiffs are entitled to redress.

25. The plaintiffs are entitled to the indemnity they sought. What they can recover under the indemnity, however, must be proved. Similarly, while the plaintiffs are entitled to recover damages for losses incurred by them, the losses must be proved. I therefore varied the Assistant Registrar's orders so that the amount recoverable under the indemnity and the damages recoverable are to be assessed, and I also made it clear that the orders shall not prevent the defendants from taking out a separate action against the plaintiffs on the alleged misrepresentation on the measurement of the cargo, or for additional freight.

Kan Ting Chiu

Judge

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