United Overseas Bank Limited v Sim Marine Services Pte Ltd
[2000] SGHC 191

Case Number : Adm in Per 137/1999
Decision Date : 19 September 2000
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Andrew Ong with Kendall Tan (Rajah & Tann) for the plaintiffs; Jeffrey Beh (Lee Bon Leong & Co) for the defendants
Parties : United Overseas Bank Limited — Sim Marine Services Pte Ltd

JUDGMENT:

1. The Plaintiffs were and are mortgagees of the vessel 'Equator Royal' ('the Vessel') owned by Thong Soon Maritime Pte Ltd ('the Owners').

2. The Vessel was mortgaged to the Plaintiffs for a facility granted to Thong Soon Lines Pte Ltd ('Thong Soon Lines').

3. The Owners had entered into a Barecon '89 Charterparty dated 1 May 1998 with the Defendants for the charter of the Vessel by the Defendants for a period of twelve months from 1 May 1998. The Defendants had an option to extend the Charterparty for a further twelve months.

4. The facility to Thong Soon Lines was terminated by letter from the Plaintiffs' solicitors, M/s Rajah & Tann, dated 5 May 1998.

5. By a letter also dated 5 May 1998, the Plaintiffs also demanded payment from the Owners for the monies outstanding.

6. On 20 July 1998, the Plaintiffs commenced action in Suit No 1219 of 1998 in which Thong Soon Lines were the First Defendants and the Owners were the Third Defendants.

7. By a letter dated 13 August 1998, M/s Rajah & Tann wrote to the Defendants to inform them of the Plaintiffs' interest in the Vessel and asked that all future hire be paid directly to them as solicitors of the Plaintiffs.

8. However, they also put the Defendants on notice of the Plaintiffs' entitlement to take possession of the Vessel and to require that the Vessel be moved to any location for the purpose of preserving the Plaintiffs' security in the Vessel. They therefore required the Defendants to sail the Vessel back to Singapore immediately.

9. The Plaintiffs then obtained Judgment in Default of Appearance against the Owners in Suit No 1218 of 1998. The Judgment was obtained on 28 August 1998 and included a mandatory injunction to deliver up the Vessel to the Plaintiffs.

10. There was no reply from the Defendants to the first letter dated 13 August 1998.

11. A reminder was sent by M/s Rajah & Tann dated 2 October 1998 seeking a response by 5 October 1998 and threatening legal proceedings in the absence of a reply. Again there was no reply from the Defendants.

12. A third letter was sent by M/s Rajah & Tann to the Defendants dated 13 October 1998. This letter enclosed a copy of the default Judgment obtained on 28 August 1998. It also asked the Defendants to revert as to whether they would be taking steps to deliver up the Vessel. Again there was no reply.

13. The Defendants did not dispute that the Plaintiffs were entitled to possession of the Vessel.

14. The Defendants' position was that the Charterparty was terminated by the Defendants on or about 27 July 1998 when due notice was given by the Defendants to Thong Soon Lines to 'off-hire' the Vessel due to a mutiny aboard and the crew refusing to sail the Vessel amongst other reasons. The Defendants said that they were no longer the hirer of the Vessel on 13 August 1998 when the first letter was sent to them and they were not in possession of the Vessel then.

15. Prima facie, the Defendants had been in possession of the Vessel prior to 13 August 1998 and even prior to 27 July 1998 pursuant to the Charterparty. That was not in dispute.

16. The burden of proof was therefore on the Defendants to establish that they had terminated the Charterparty on or about 27 July 1998 and that pursuant to that termination, they had parted with possession of the Vessel before 13 August 1998.

17. I find that the Defendants have failed to discharge that burden.

18. Accordingly, I grant judgment in favour of the Plaintiffs against the Defendants.

19. The Defendants are to pay damages for detinue calculated as follows:

(a) Damages for detention at US$400 per day from 1 September 1998, and not from 13 or 14 August 1998 because the Defendants would have taken some time to sail the Vessel back to Singapore even if they had complied with the Plaintiffs' directions to do so. Such damages are calculated up to date of judgment. This works out to US$400 x 750 days (731 days for 2 years + 19 days for September 2000)	- US$300,000
(b) Damages being the value of the vessel as at date of the judgment	- US$270,000
(c) Less the estimated cost of paying the crew to sail the Vessel back to Singapore and other expenses, say,	- US$10,000
	US$560,000

20. The Defendants are also to pay the Plaintiffs the costs of the action.

Woo Bih Li

Judicial Commissioner

Copyright © Government of Singapore.