Sim Chiang Lee and Others v Lee Hock Chuan and Others
[2000] SGHC 270

Case Number	: Suit 1777/1999
Decision Date	: 12 December 2000
Tribunal/Court	: High Court
Coram	: Choo Han Teck JC
Counsel Name(s)	: Gn Chiang Soon [Gn & Company] for the first and second plaintiffs; Cheong Yuen Hee and Alyssa Lee [Lim & Gopalan] for the first defendants
Parties	: Sim Chiang Lee; Sim Sien Tiong; Sim Thiam Oh; Sim Ah Ban; Tung Hui Mannequin Industries — Lee Hock Chuan; Lee Poh Chuan; Lee Poh Huat; Lee Chien Poh; Lee Chen Guan; Lee Chui Huat; Lee Chen Chon; Great Wall Interior Decor Pte Ltd; Teamwood Decoration & Construction Pte Ltd

JUDGMENT:

Cur Ad Vult
(In respect of the Third Defendants)

1. The case against the first and second defendants have already been dealt with in my grounds of decision dated 28 November 2000. The trial continued thereafter against the third defendants a joinery and furniture making company. This is my judgment in respect of the claims against the third defendants.

The Background

2. On 20 February 1999 a fire razed two shophouses known as 23 and 25 Senang Crescent ("No. 23" and "No. 25" respectively). The first plaintiffs are the owners of No. 23 and the second plaintiff was the tenant of the second storey of that shophouse. The first defendants are the owners of No. 25. The second defendants were the tenants of the second storey of No. 25, and the third defendants were the tenants of the first storey of No. 25. The plaintiffs sued all three defendants for damage arising from the fire on the ground that the fire started at No. 25 and was the result of the negligence of the defendants. They also sued alternatively under the rule in *Rylands v Fletcher*, and recited *res ipsa loquitur* for good measure. No claim was made in the tort of nuisance. The first and second defendants each filed a counter-claim on the ground that the fire started at No. 23. However, in the midst of the plaintiffs' case at trial Mr. Cheong and Mr. Anparasan, counsel for the first and second defendants respectively, were granted leave to discontinue the counterclaims.

3. The main issue of fact concerned the origin and cause of the fire. Where the cause of action is founded on negligence, the origin of fire need not necessarily be at the defendants' premises. But, in this case the plaintiffs specifically alleged that the point of origin and the negligent act (cause of the fire) occurred at the premises occupied by the third defendants, namely the first storey of No. 25. The plaintiffs' case was that the fire originated beneath a woodpile in the front yard of No. 25. They alleged that the fire was caused by an electrical short circuit. Their case was that the fuses in the premises had been tampered and up-rated. Consequently, the fuses failed to break the current when the short circuit occurred. The short circuit enabled sustained arcs (electrical sparks) to result and that ignited the fire which subsequently spread to the plaintiffs' premises next door.

4. At the close of the plaintiffs' case counsel for the first and second defendants submitted that there was no case for these defendants to meet. After hearing submissions, I accepted the demurrer and dismissed the plaintiffs' claim against the first and second defendants and the trial continued against the third defendants.

5. The plaintiffs' claim against the third defendants was based on negligence. Their case was that the fire started at the first

storey of No. 25, which were the premises occupied by the third defendants, and that the fire was caused by a sustained electrical arc. Their case was that the third defendants were negligent in not maintaining their electric cables in good condition, and more importantly, failing to maintain a proper fuse box or circuit breaker. The plaintiffs called three experts. The first was Lt. Rashid from the Singapore Civil Defence Force ("SCDF"). He was the head of a team of three officers assigned to investigate this particular fire. The second was Dr Jimmy Chen Wie Ying, an electrical engineer, and the third was Mr. Tan Jin Thong, a retired Director of the Singapore Fire Services and Deputy Commissioner of the Singapore Civil Defence Force.

Lt. Rashid's Report

6. Lt. Rashid has about 17 years experience in the Fire Fighting Service. He was the head of a team of three officers who investigated this fire. A written report was subsequently made by the team and Lt. Rashid's evidence in court relied largely on that report. Recounting his investigation, Lt. Rashid said that when he arrived at the scene of the fire, the firemen were attacking the fire at No. 25 because the fire appeared most flagrant there and was spreading to No. 23 because of a north-westerly wind. He was also told by the police officers at the scene that a passer-by on a motor-cycle saw the flames and had gone into the premises of No. 25 where he reportedly told the police he saw sparks coming from underneath some timber.

7. He examined the fire damage and noted that No. 25 was more extensively damaged. It is not disputed that the whole of the first and second storey of No. 25 were razed. No. 23, however, suffered extensive damage to its second storey, but its first storey was almost unscathed in comparison. Little, if any, damage by fire was suffered by either No. 21 or No. 27, the two shophouses which sandwich No. 23 and No. 25.

8. Lt. Rashid interviewed a Bangladeshi worker employed by the third defendants. He was the only person in the third defendants' premises at the time. There was little dispute that the third defendants' premises had been closed for the Chinese New Year holidays from 12 February 1999 and was to re-open on 22 February 1999. The Bangladeshi worker told Lt. Rashid that when he awoke in the middle of the night to go to the toilet he did not notice anything unusual. He woke up a second time when he felt very warm. He went to the front windows where he noticed a great deal of heat and smoke coming from the front yard so he ran away from the rear of the premises. Although this interview was recorded immediately after the fire, the witness's name and particulars were not recorded and he had since returned to Bangladesh. A woman who lived nearby was also interviewed but her evidence was of not much assistance in determining the origin or cause of the fire. The initial firefighters reported that they saw some electrical sparkings at the front yard of No. 25. They noted that there was a breeze blowing in the north-westerly direction, and the fire was spreading "laterally and towards the rear", that is, the fire was spreading from No. 25 towards No. 23. The plaintiffs' two material witnesses were Mr. Udom Kasemkrai and his friend Mr. Soo Chee Meng. Mr. Kasemkrai was a partner of the second plaintiffs. They carry on the business of manufacturing mannequins. On 19 February 1999 Mr. Kasemkrai and Mr. Soo were working till close to midnight rushing to complete a consignment of mannequins. Mr. Kasemkrai testified that the lights in his room went out suddenly about 3.15 in the morning of 20 February. He saw smoke coming from No. 25. When he realised that there was a fire he called Mr. Soo and then ran out of the building. He testified that he did not see any fire on the premises of No. 23 but there was fire in the front compound of No. 25. Mr. Soo gave a very similar account except that he ran back once to No. 23 to search for his passport. Mr. Kasemkrai, speaking through a Mandarin interpreter, was a difficult witness in that he was rather hard of hearing and did not come across as someone with a clear and organised mind, but I have no reason to think that he was being untruthful. Mr. Soo was quite the opposite. I found him to be generally dependable, and of all the witnesses of fact, he was the most reliable. I have little hesitation in accepting his account. On the evidence as I had just described, I am of the view that the fire probably started in the front yard of No. 25. I note the evidence of the experts Mr. Dillon and Dr. Mullen in respect of the general theory that the fire seemed greater at No. 25 than at No. 23 because the fire burned through the front roofing of No. 23 and thus the fire was able to escape upwards, thereby sparing the internal ground floor from extensive damage; whereas the tougher roofing material on the front yard of No. 25 trapped the fire and heat forcing the fire to spread inwards resulting in severe damage to the internal ground floor of No. 25. I also note their theory that the fire could have started from the front yard of No. 23 and the flames leapt over the central fence dividing the two premises, into No. 25 and because of the heavy fireload, the flammable materials, and the architectural design, the fire at No. 25 consequently became larger than that at No. 23. I will not dismiss these theories as impossible, but on all accounts, I find that it was more probable that

the fire started at the front yard of No. 25.

The Opposing Theories - The Plaintiffs' Case

9. That, however, was only half the story. The next crucial question was, what caused the fire? Mr. Gn, counsel for the plaintiffs, advanced a theory of the cause of the fire. It was based on the postulations of Dr. Chen. Counsel sought support in the evidence of Mr. Tan and Lt. Rashid. Dr. Chen was appointed Professor of Electrical Engineering in the University of Singapore in 1969. He has an impressive rsum which includes membership in the Standing Committee of the Fire Safety Bureau. He was a commissioner in the Commission of Inquiry into the Robinson's fire in 1973, and Chairman of the Fire Safety Appeals Advisory Board, among other appointments. Dr. Chen was of the view that the fire started about 3 am or slightly later and was caused by a short circuit at the supply wiring to the machines located in the front yard of No. 25. He said that the ignition was caused by electrical arcing (sparks) in the course of the short circuit. The problem was compounded because the fuses that were supposed to cut off any over current did not work because the fuses were incorrect ones. He said that the fuses consisted of 3 strands of copper wires instead of smaller more sensitive wires. The incorrect fuses, according to Dr. Chen allowed the short circuit to persist. Dr. Chen stated that a "short circuit occurred at these wirings because the wirings had not been maintained; and most probably it had been over-loaded. Over time, the insulation on the copper deteriorated then a short-circuit occurs".

10. The plaintiffs also called Mr. Tan, an impressively credentialled retired Director of Fire Service and former Deputy Commissioner of the Singapore Civil Defence Force. Unfortunately, Mr. Tan laboured under the disadvantage of being briefed about a year after the fire and therefore had to work principally from documents, photographs and instructions from the plaintiffs and their solicitors. He did, however, visit the fire site to familiarize himself with the layout and design of the buildings, which had been restored in the meantime. Mr. Tan's contribution to the plaintiffs' cause was his agreement with Lt. Rashid that the point of origin of the fire was a wood pile in the front yard of No. 25. Lt. Rashid had based his conclusion on what he perceived as a "V" shaped burn pattern near the wood pile. He testified that he saw this pattern when he inspected the site. Mr. Tan agreed with Lt. Rashid's conclusion by looking at the photographs. He was of the view that the wood pile had sustained "severe deep charring and that the burning was from a very low level". He also saw some burnt out electrical wirings below the stack of timber. He said that the timber were stacked closed and would not burn easily "especially from the bottom of the stack". He was of the view that burnt wiring recovered from under the wood pile was probably the point of ignition. He said that the fire was probably smoldering and burning for about 30 to 45 minutes before flaring. That also explained why a hole had been burnt through the fence near that point.

The Third Defendants' Case

11. The third defendants called Mr. Barry Dillon as their expert. Mr. Dillon has an equally impressive rsum. He has a specialist expertise in metallurgy but had also investigated well over 900 fires. He does not disagree with Dr. Chen's views that untrunked wiring may lead to a short-circuit, but he disagrees with the inference that if the wires were trunked no short-circuit can take place. He also pointed out that some of the wires found on the premises of No. 23 were also not trunked. Mr. Dillon was highly critical of Mr. Tan and Lt. Rashid's theory that the fire started at the wood pile. He testified that he "could not understand how Lt. Rashid and [Mr.] Tan can say that the fire came from underneath. The steel frame on which the wood was stacked, it had distorted and toppled forward. No longer evidence of wood on the top two shelves. The wood burn. Why not argue that the fire started from there? Mistake was assuming that the woods were nicely stacked with pieces close together. If that was the case, it would be true that the wood would burn more slowly. But that's not the case from photos 10 and 11. The timber had fallen. When it does, it is random and burns more quickly because of more surface area."(sic).

12. The position taken by Mr. Dillon, and to a large extent by Dr. Eric Mullen, (originally called as an expert witness by the first defendants) was that the fire was far too extensive for any evidence as to its origin to be ascertained. Dr. Mullen took the position slightly further and postulated that the fire could even have started in the upper floor of No. 23 (the second plaintiffs'

premises), or on the ground floor of No. 23 near the wall adjoining the front yards. Dr. Mullen is extremely well qualified and, like Mr. Dillon, has extensive experience as a fire investigator. He too had investigated over 900 fires with the firm of Dr. JH Burgoynes & Partners. Dr. Mullen is of the view that there is "virtually zero chance" of a short circuit causing the fire in this case because a short circuit would have generated such a high current that even the alleged incorrect fuses used here would have blown, thereby cutting off the current flow. He also noted that no one witness, including Dr. Chen, had offered any reason why a short circuit could have arisen. Dr. Mullen was of the opinion that the plaintiffs' theory that a short circuit occurred on a straight run cable is impossible to sustain. The reason, he said, is that the wires do not touch, which is what happens when a short circuit occurs. Furthermore, he explained that the arcing (electrical currents) can occur when the melted insulation for the wires melt and become conductors of current. However, such arcing occurs after a fire has broken out and not before. Thus, he said, the cause of the fire here could not have been due to arcing. He testified that that explains why the firemen saw sparks at the front yard of No. 25 when they were putting out the fire. Dr. Mullen and Mr. Dillon were of the view that Lt. Rashid had placed too much emphasis on arcing, reports of sparkings, and melted wires. Both these experts were of the view that the sparkings were merely evidence of a serious fire attack and not the cause of the fire. Mr. Dillon spent some time and effort explaining the greenish tone found on the wires in the fuses. Dr. Chen had suggested that this colour was caused by the heat of the current. In this regard Mr. Dillon's explanation that the green tones were caused by rain and water from the firefighters is probably more accurate. However, contrary to Mr. Teo's fervent belief, this point is not of great significance. Mr. Teo thought that it was the centrepiece of Dr. Chen's theory. It is not.

Findings

13. It is truly a difficult task to assess the opinions of witnesses who are called precisely because the subject matter required specialist knowledge when the judge himself stands alone least qualified. I had dealt with the simpler of the findings that I needed to make, namely, where did the fire originate? I accept that in a massive fire as that experienced by the two adjoining premises here, relevant evidence of the cause may have been consumed and obliterated by the fire itself. The evidence here amply suggests that the wires were so badly burned that it was impossible to trace the connections or yield any useful information. However, sufficient clues remain. In this regard, I accept the general theories of electrical conduct that Dr. Chen espoused. The fire, in my view, did not destroy all the evidence. I accept Mr. Gn's submission that the electrical sparkings seen by the witnesses indicate that there was still electricity flowing in the cables even when the fire was in full flame; otherwise no electrical sparks could have been created. This was supported by the evidence that the switches at the isolators were left in an "on" position when the shop closed for the holidays. Dr. Mullen and Mr. Dillon had steadfastly maintained that in the circumstances of the case, arcing from a short circuit could not have happened. Dr. Mullen stated that the wires in question were "straight run" wires which could not have created an arc or short circuit. Furthermore, even if a short circuit had occurred the fuses would have tripped and the electricity supply cut off. This was so, he said, even accepting that the fuses were not of the correct quality. In my view, that conclusion can only be maintained on the premise that the wires were well maintained and not defective. If the insulation covering the live and neutral wires were broken the probability of the exposed wires making contact would be very high. The issue is whether there is sufficient evidence to conclude or infer that there was probably some defective cables.

14. Dr. Chen was of the view that there was no evidence that there was "an initiating fire to set the insulation smoking below the pile of wood". He believed, therefore, that the cause was arcing in the wires. He disagreed with Dr. Mullen's theory of a "dead short circuit" which would send the current beyond 200 amperes and blowing the fuses. In short, he drew the inference, from the circumstances and the available clues, that the fire could only have been caused by an electrical short circuit. In the absence of the probability of any other possible cause, his inference, in my view, is reasonably probable.

15. There is no doubt that Dr. Mullen and Mr. Dillon were exacting a high standard on themselves as experts in their field, but they were unable to accept Dr. Chen's opinion because they were searching for irrefutable hard evidence. The court, however, is not required to seek such evidence in evaluating the balance of probabilities. I am satisfied that Dr. Chen had been no less exacting on himself than Dr. Mullen or Mr. Dillon but nonetheless, had established a reasonably probable theory, supported by evidence, of how the fire occurred. After taking into accounts of Dr. Mullen and Mr. Dillon, I am satisfied that on a balance of

probabilities the fire occurred as a result of an electrical short circuit in the premises of No. 25. The "up-rated" fuses were not able to break the circuit and thereby electrical current continued to flow, resulting in the ignition of the fire. Mr. Dillon agreed that the up-rated fuses permitted a greater current flow than that prescribed but he disagreed that that resulted in the ignition of the fire. Dr. Mullen suggested that there could have been some circuit breakers in the premises but these, he said, could have been destroyed in the fire because modern circuit breakers are made of less durable materials. I think that it is fair to say that this is speculative contemplation because, apart from the absence of any trace of a circuit breaker or any component part in the burned shophouse, there were no evidence from the third defendants that they had any circuit breakers other than the three fuses in question. The case against the third defendants was apparent to them from the start and the presence of circuit breakers would feature as a key component of their defence; but no evidence was adduced that there were any and I think that it is reasonable to conclude that there were none in the old shophouse. I should add that Dr. Mullen did express the view that he could not imagine that the shophouse was served by only three fuses, but that seems to be the evidence. Furthermore, there was evidence of a circuit breaker in No. 23; none in respect of No. 25. I do not think that it is right to assume that if there was a circuit breaker in No. 23 it must follow that there was one in No. 25. That was not Mr. Teo's point in any event. The circuit breakers are modern devices and must be installed specifically. There was no evidence of such installation in No. 25 a building of at least 30 years in age.

16. I think that it is not necessary for the plaintiffs to prove that the third defendants were the ones who altered the fuses. The fuses were in premises they occupy and use. The responsibility rests with them to ensure that the electrical wires are well insulated and the proper fuses or circuit breakers were in place. It was not disputed that the fuses were not in conformity with the recommended 30 amperes specification. In the circumstances, the third defendants, in failing on these counts, were negligent and the plaintiffs' claim against them in negligence must succeed.

Res Ipsa Loquitur

17. I had dealt with the plaintiffs plea of *res ipsa loquitur* in my grounds of decision in respect of the case concerning the first and second defendants, but it is necessary to repeat my views in this judgment as the plaintiffs had also raised this plea against the third defendants. *Res ipsa loquitur* is only an evidentiary doctrine and does not apply in this case because the plaintiffs had specifically sought to show that the cause of the fire was an electrical ignition. That being the case, it will not assist them to say that if they fail, the defendants must then explain how the fire occurred. This is not how the doctrine was intended to be used. The burden of proof lies with he who asserts. Where a plaintiff asserts negligence he must prove negligence. If he is unable to assert any cause, then he may, if the circumstances permit, cry *res ipsa loquitur* and shift the burden of proof to the defendant to establish how the facts complained of occurred. The overall burden (the legal burden) of proving the plaintiffs' case remains with the plaintiff. Where, as in this case, the plaintiff makes a specific allegation of negligence he cannot rely on the rule to establish a preliminary case of negligence. He must proceed to prove forthwith that which he has asserted to be the defendant's negligence, which in this instance, the plaintiffs had accomplished.

18. I will hear parties on the question of costs at a later date.

Choo Han Teck

Judicial Commissioner

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