Comfort Management Pte Ltd *v* Afco East Pte Ltd and others
[2012] SGHC 137

Case Number : Suit No 313 of 2011

Decision Date : 29 June 2012

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Soh Gim Chuan (Soh Wong & Yap) for the plaintiff; Cheah Kok Lim (Cheah Associates LLC) for the defendants.

Parties : Comfort Management Pte Ltd — Afco East Pte Ltd and others

Landlord and Tenant – Distress for Rent – Illegal Distress

Tort – Conversion

29 June 2012 Judgment reserved.

Judith Prakash J:

Introduction

1 In its statement of claim, the plaintiff, Comfort Management Pte Ltd, formulates its claim against the defendants as being "for conversion and/or for wrongful or illegal distress of the Plaintiffs' properties".

2 There are three defendants. The first defendant is Afco East Pte Ltd ("Afco"), a Singapore incorporated company. Mr Lee Bee Eng and Ms Ang Lay Hong, the second and third defendants respectively, are the directors and shareholders of Afco.

3 The proceedings herein are an offshoot of OS 71 of 2008 ("OS 71") filed in the Subordinate Courts by Afco in February 2008. In OS 71, Afco applied under the provisions of the Distress Act (Cap 84, 1996 Rev Ed) ("the Act") to procure the issue of a Writ of Distress against a firm called Alaskan Ice Distribution ("Alaskan Ice"). Pursuant to this writ certain equipment lying in Afco's premises at 9 Jalan Tepong Singapore ("the premises") was seized by the Bailiff of the Subordinate Courts and subsequently sold by auction in July 2008. The plaintiff's position is that the equipment was wrongly seized and sold because it did not belong to Alaskan Ice but belonged to the plaintiff as the defendants well knew at the time of the seizure.

4 The trial of the action took place over two days in December 2011. At the end of the plaintiff's case, the defendants elected not to call any evidence and submitted that there was no case to answer. The parties subsequently filed written submissions.

No case to answer – the law

5 The test of whether a defendant has a case to answer is whether the plaintiff's evidence, taken at face value, establishes a case in law or, alternatively, whether the evidence led by the plaintiff was so unsatisfactory or unreliable that the plaintiff was unable to discharge its burden of proof. See *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 at [20] following

Bansal Hemant Govindprasad v Central Bank of India [2003] 2 SLR(R) 33 at [11].

6 In this case, while the defendants say that they have no case to answer based on both of the above grounds, the reasons given in their written closing submissions seem to suggest that they are mainly pursuing the first ground of no case to answer, namely, that the plaintiff's evidence at face value does not establish a *prima facie* case in law.

The facts

7 From 2005, Afco was the landlord of the premises. At the time that Afco became the landlord, the premises housed certain equipment ("the equipment") which was used to produce ice. The plaintiff's position is that it was at all material times the beneficial owner of the equipment and was the producer of the ice which was then distributed by Alaskan Ice. According to the plaintiff, Alaskan Ice was an associate business of the plaintiff but the plaintiff did not clarify the exact relationship between it and Alaskan Ice. The evidence before me establishes that the plaintiff was at all material times the absolute owner of the ice production machine, two refrigeration systems and the switchboard which formed part of the equipment. As for another part of the equipment, the automatic freezing tank, the plaintiff was purchasing this on hire purchase and completed all its hire purchase payments in July 2008 when it became the owner of the tank. Before that it was the bailee of the tank under the hire purchase agreement.

8 The plaintiff's position was that at all material times, it was the tenant of the premises. It produced evidence of a tenancy agreement dated 31 December 2002 between itself and the prior landlord of the premises, one Fong Fo Eng ("Mr Fong"), under which the premises were let to the plaintiff for two years. The plaintiff said that this tenancy agreement was succeeded by another one made in 2004 for the period from 1 January 2005 to 31 December 2006. The plaintiff, however, admitted through its counsel that the 2004 tenancy agreement was never signed by Afco. It also appears from the copy of the document that was produced in court that it was not signed by Mr Fong either and was also not stamped. The plaintiff subsequently learnt that Mr Fong had transferred the premises to Afco and that Afco was the landlord.

9 The defendants' position was that the plaintiff was not the tenant of the premises from 2005 onwards. They said that Alaskan Ice was the tenant under a month-to-month tenancy because Alaskan Ice was the party who paid the rent of the premises. This rental payment was evidenced by statements of account which Alaskan Ice issued to Afco from 30 April 2005 to 31 January 2006.

10 The plaintiff's response was that Alaskan Ice was not the tenant because it had never signed any tenancy agreement. The plaintiff admitted, however, that Alaskan Ice had paid the rental for the premises under the 2002 and 2004 tenancy agreements but asserted that such payments were made on the plaintiff's behalf because the plaintiff and Alaskan Ice had a contra agreement in respect of the dealings between them relating to the sale and purchase of ice. There was, however, no documentary proof (as the plaintiff admitted) of the purchase of ice by Alaskan Ice and no documentary proof that Alaskan Ice and the plaintiff had agreed that Alaskan Ice should pay the rental and that such payments should be set off against the cost of ice supplied to Alaskan Ice by the plaintiff.

11 The plaintiff also asserted that there was another contra agreement between it and Afco. Afco bought ice from Alaskan Ice and agreed that the amount due from it should be set off against the rent payable for the premises. The statements of account between Alaskan Ice and Afco were prepared by the plaintiff and although they show a contra agreement between these two parties, there is no indication at all that Alaskan Ice was paying the rent that was being set off on behalf of

the plaintiff. The plaintiff did not, it seems, seek to protect its position by documenting it. There is thus no proof of such an arrangement between the plaintiff and Afco.

12 The plaintiff ceased ice production activities on the premises on 28 January 2006. It admitted that from February 2006 onwards, no rent was paid for the premises. Its position was that it had the intention to remove the equipment from the premises and to sell it but that it did not do so because Afco wanted to use the equipment and this resulted in a verbal agreement under which Afco would set off the rent for the equipment against the rental that the plaintiff had to pay for the premises. This verbal agreement was denied by Afco which said it never used the equipment. Further, the evidence given in court that an agreement was arrived at was contrary to the position that the plaintiff took in a letter to Afco's solicitors written on 19 February 2008. In that letter, the plaintiff said that despite numerous discussions held, the plaintiff and Afco could not arrive at an agreement. The plaintiff's position is that Afco continued to operate the equipment until it broke down completely in July 2007.

13 On 3 January 2008, Afco's solicitors sent the plaintiff a letter of demand claiming rental of $212,688 for the period from January 2006 to December 2007. On 19 February 2008, the plaintiff responded. It denied Afco's allegations and asserted that Afco owed it money for the use of the equipment and for damage caused to the equipment.

14 On 26 February 2008, Afco commenced OS 71 against Alaskan Ice seeking, *inter alia*, leave to levy a distress for rent due in respect of the premises from January 2006 to December 2007. The ground of the application was that Afco had issued invoices to Alaskan Ice for rent since January 2005 and Alaskan Ice had in turn issued statements of account admitting its indebtedness to Afco for such rent. These documents were accepted by the District Court as evidencing the tenancy between Afco and Alaskan Ice and Afco was granted leave to levy a distress for rent amounting to $100,800, which represented the rental amount for the period of January 2007 to December 2007. The writ of distress was issued on 2 April 2008 and executed on 15 April 2008.

15 More than a month after the writ was executed (26 May 2008), the plaintiff filed a Notice of Claimant of Property taken in Execution. It claimed that it was the owner of, or, had right title and interest in, the equipment. The plaintiff's Notice was, however, rejected by the Registry of the Subordinate Courts apparently because it did not fulfil procedural requirements. On 14 July 2008, the plaintiff filed Summons 9768 of 2008 in OS 71 seeking an injunction to restrain Afco from selling or otherwise disposing of the equipment and further, an order discharging the writ of distress or any sale made thereunder. This application was heard on 18 July 2008 and was totally unsuccessful. The plaintiff did not appeal and the equipment was sold on 21 July 2008. The plaintiff then took no further steps until the writ of summons herein was filed on 29 April 2011, almost three years later.

The pleadings

16 In its statement of claim, the plaintiff stated that its claim was against all the defendants for conversion and/or for wrongful distress of the equipment. It asserted that the second and third defendants were at the material time, the directors and shareholders of Afco. It went on to make the following allegations:

(a) On 3 January 2008, Afco had demanded payment of the rental arrears in respect of the premises;

(b) On 19 February 2008, the plaintiff had denied the allegation and claimed that instead it was Afco that owed the plaintiff money for the use of the equipment and demanded payment

from Afco;

(c) Afco did not pay the claim but instead "quietly commenced" OS 71 against Alaskan Ice for possession and arrears of rent "when Alaskan Ice Distribution was not the tenant [of the premises]";

(d) Afco obtained default judgment against Alaskan Ice and then seized the equipment. The plaintiff alleged that it was "at all material times the beneficial owners of the equipment and all the defendants were aware of it";

(e) The plaintiff applied to stop Afco from selling and auctioning the equipment and to discharge the writ of distress "but had too short a time to gather their documents, and the equipment seized was sold off or otherwise disposed of in or about July 2008".

17 The plaintiff claimed that because of the seizure and sale:

(a) "the Defendants have converted the equipment to their own use and have wrongfully denied the Plaintiffs thereof"; and

(b) "the Defendants have committed distress on the equipment that was wrongful, unjustifiable or illegal, and have wrongfully deprived the Plaintiffs thereof".

18 The statement of claim stated that the claim by the plaintiff extended to the second and third defendants in their capacity as "directors and shareholders of [Afco]" because they "were aware of and party to [Afco's] said actions". The plaintiff did not elaborate on why the corporate veil should be lifted and the second and third defendants made personally responsible for Afco's actions.

19 The defence was basically a denial that the plaintiff had the right to make a claim against the defendants jointly or severally for conversion, wrongful/illegal distress or on any other basis. This was because:

(a) OS 71 was commenced against Alaskan Ice because of its statements of account and these documents were accepted by the court as evidence that Alaskan Ice was the tenant;

(b) There was no evidence that the equipment belonged to the plaintiff;

(c) The plaintiff was aware of OS 71 and the subsequent issue of the writ of distress;

(d) No default judgment was obtained against Alaskan Ice. Only a writ of distress was issued against Alaskan Ice who did not come forward to dispute the distress proceedings even though it was allegedly the plaintiff's associate company;

(e) The plaintiff had filed a claim for the equipment and applied for its release. It had had ample time to do this because there was five months between the plaintiff's letter of 19 February 2008 and the date on which it filed the application to stop the sale. There was also a period of one and half months between the filing of the Notice of Claim on 26 May 2008 by the plaintiff and the filing of the summons on 14 July 2008.

20 The defendants also said that as there was no appeal against the order dismissing the application by the plaintiff to stop the sale, the matters raised in these proceedings were *res judicata*.

21 The plaintiff then filed a reply claiming that Alaskan Ice had purchased ice from the plaintiff and sold it to Afco. Alaskan Ice owed the plaintiff money for the purchases and the plaintiff requested that Alaskan Ice paid the rent for the premises. Alaskan Ice was not the tenant of the premises at the material time but the plaintiff was the tenant. It also alleged that the issues in the present proceedings were not *res judicata*.

The issues

22 The defendants submitted that they have no case to answer for the following reasons:

(a) First, the defendants said that the plaintiff cannot pursue a claim in wrongful distress of the equipment because there is no common law action for wrongful or illegal distress in Singapore. Even if such a common law action exists, there was no wrongful distress of the equipment on the facts of the case;

(b) Second, the defendants said that the plaintiff could not pursue a claim in conversion because this claim was tacked on the claim in wrongful distress, which, the defendants submitted, failed;

(c) Third, the defendants said that the plaintiff was precluded from raising the issue of whether Afco was entitled to issue distress proceedings on the equipment seized by the bailiff because that issue was *res judicata* following the dismissal of the plaintiff's application in OS 71;

(d) Finally, the defendants said that the plaintiff was not entitled to lift the corporate veil and make the second and third defendants personally liable for the default of Afco.

23 There are therefore potentially four areas to be considered. However, the last area, that of the personal liability of the second and third defendants, need only be considered if the plaintiff succeeds on either its claim for conversion or its claim for wrongful distress. The issue of *res judicata* is not an independent issue and may only need to be considered in the context of the conversion claim. I propose to deal with conversion first and thereafter with the claim for wrongful distress.

Conversion

24 The difficulty that I have with the plaintiff's conversion claim is that the plaintiff itself did not discuss either in its opening statement or in its closing submissions why it thought that the elements of conversion had been established in fact and in law.

25 The plaintiff's opening statement set out the brief facts of the matter and then identified the issues before the court as being:

(a) Whether the plaintiff was Afco's tenant at the premises at the time when OS 71 was commenced;

(b) Whether the plaintiff had legal or beneficial rights and interest in the equipment and whether the defendants had committed wrongful or illegal distress on the same; and

(c) Whether Afco ought to have proceeded with the sale under the writ of distress because it had been given due notice of the plaintiff's rights and interests by way of the Notice of Claim and the affidavits which the plaintiff had filed.

The opening statement then went on to make certain arguments as to why the doctrine of *res judicata* did not apply. The opening statement concluded with no mention whatsoever of conversion.

26 As the defendants had submitted that there was no case to answer, their closing submissions were delivered first. In this document, they asserted that the conversion claim was linked to the distress proceedings. They submitted that on the basis of the pleadings, this claim was tacked on to the wrongful distress claim since the seizure had been carried out by the Bailiff pursuant to the writ of distress and in accordance with the provisions of the Act. Accordingly, if the claim for wrongful distress failed, the conversion claim would also fail. As an alternative, the defendants submitted that the doctrine of *res judicata* applied to prevent the plaintiff from re-arguing the issue of whether Afco had been entitled to issue distress proceedings and execute the writ of distress against the equipment.

27 Thereafter, the plaintiff filed its closing submissions and reply. In the same, it did not deal at all with the defendants' submission that the conversion claim had to fail if the wrongful distress claim failed. Nor did the plaintiff say why and how the claim for conversion had been established. Instead, it dealt only with *res judicata*. Even if the plaintiff were to be successful in establishing that *res judicata* does not apply to the facts here, that in itself does not mean that conversion has been established.

28 In these circumstances, it appears to me that the plaintiff did not make out any case of conversion which the defendants had to answer. For completeness, however, I will deal briefly with this issue.

29 The basic elements of a claim in conversion are that a third party has, without authority, dealt with the claimant's chattel so as to question or deny his title to it. See *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Orix Leasing*"). The plaintiff would therefore have to show that it had legal standing to sue in relation to the equipment and that Afco had converted the same. As for the legal standing to sue, I have already stated in [7] above that the evidence indicated that the plaintiff was the legal owner or bailee of most of the equipment at the time that OS 71 was commenced. Therefore, the plaintiff had the right to possession of most of the equipment. In any event, it was probable that the plaintiff had possession of the equipment prior to January 2008 being (according to the evidence it adduced which the defendants did not rebut) the party who had used the equipment prior to the dispute without adverse claims from any other party, especially Alaskan Ice. Alaskan Ice did not claim the equipment nor was there any evidence that the plaintiff had agreed to lease the equipment to Alaskan Ice or otherwise transfer possession to it. Accordingly, the requirement of legal standing to sue would be satisfied.

30 The next question was whether Afco had committed any act of conversion of the equipment. In this connection, the only relevant act to be considered is its application through OS 71 for the writ of distress as Afco committed no other act in relation to the distraint and sale of the equipment. There is no case directly on point but it appears to me that such act on the part of the plaintiff cannot amount to conversion. While an act of conversion includes an unauthorised course of dealing not involving physical possession or physical handling of the goods in question, such an act must deprive the plaintiff of his right to possession or amount to a substantial interference with that right (*UCO Bank (formerly known as United Commercial Bank) v Ringler Pte Ltd* [1995] 1 SLR(R) 399 at [19]), question or deny his title to the goods in question, or be committed with the intention of exercising a permanent or temporary dominion over it (*Orix Leasing* at [45]).

31 In the instant case, the application for the writ of distress was not an act which purported to exercise control or dominion over the equipment. It did not amount to a transfer of title of the

equipment to the bailiff or to any other party. Whilst the granting of the order and the execution of the writ led to the plaintiff eventually losing its right of possession to the equipment and its title to the same, this resulted from lawful court action. All that Afco did was what it was legally entitled to do in protecting its legitimate interest in collecting rent from Alaskan Ice.

32 In *Thorogood v Robinson* (1845) 6 QBR 769 ("*Thorogood*"), the plaintiff was a limeburner who was in possession of some land and of the lime which was lying on the land. The defendant had recovered judgment in ejectment for the land and entered the land under the writ of possession issued pursuant to the judgment. Two of plaintiff's servants were, at the material time, loading a barge at the premises with part of the plaintiff's lime, and the defendant had turned the plaintiff's servants away from the premises and refused to let them deal with the remaining lime on the land. The plaintiff sued the defendant for, *inter alia*, the tort of conversion, and the Court held that the defendant's acts did not amount to conversion of the plaintiff's lime because the defendant had the right to enter the land to evict the plaintiff's servants (*Thorogood* at 772). The Court noted that while the plaintiff certainly had a right to the lime on the land, he should have sent someone with a proper authority to demand and receive them – if the defendant had then refused to deliver them or to permit the plaintiff or his servants to remove them, there would have been a clear conversion (*ibid.)*.

33 In the present case, Afco, like the defendant in *Thorogood*, had simply done whatever it was legally entitled to in order to protect its rights. It is pertinent to note that under the Act, the tenant against whom a lessor is entitled to levy a writ of distress is "any person from whom a landlord claims rent to be due under any such lease or agreement" (see s 5 read with s 2 of the Act). Even if Afco had committed an act seemingly depriving the plaintiff of its right to possession of the equipment or amounting to a substantial interference with that right, Afco cannot be liable in the tort of conversion because it was found to be entitled to the issue of a writ of distress on the evidence produced before the court that Alaskan Ice had not paid rental which it was liable to pay to Afco and Alaskan Ice as tenant was apparently in possession of the equipment. Action taken in a court of law to protect one's legal rights cannot be considered to be unauthorised even if, as a result thereof, a third party's right to possession of goods is interfered with. It appears to me that, conceptually, action taken by a claimant to obtain a legal remedy against a third party's property cannot amount to an unauthorised dealing in such property. The owner of the property is not in any position to authorise, let alone withhold authority for, the commencement of legal action by such claimant notwithstanding that the claimant may not have a good legal basis to do so. If the third party is aggrieved by the taking of the legal action it has remedies open to it, but, in my judgment, these do not include a claim for conversion. I tend to agree with the defendants' submission that in a situation like the present, a claim for conversion could only succeed if the distress action was common law distress rather than the judicial process established by the Act.

Wrongful or illegal distress of the equipment

34 The plaintiff concentrated its submissions on establishing that Afco had acted wrongfully in applying for the writ of distress because the defendants knew that the plaintiff was the owner of the equipment at all material times. The plaintiff says that the defendants therefore had no honest intention and no probable cause when they applied for the writ of distress and executed it. In this connection, the plaintiff relied on the observation of Shaw CJ in *Chop Chye Hin Chong v Ng Yeok Seng* [1934] 1 MLJ 265 ("*Chop Chye Hin Chong*") at p 266 that:

> It is the right of everyone to put the law in motion if he does so with the honest intention of protecting his interests but it is an abuse of that right if he proceeds maliciously and without reasonable and probable cause for anticipating success.

It should be noted, however, that that statement was made in the context of explaining that the right to make a claim for wrongful or illegal distress no longer existed in Singapore and instead there had to be an action for malicious prosecution.

35 I discussed *Chop Chye Hin Chong* in *Ginsin Holdings v Tan Mui Khoon t/a Chan Eng Soon Service* [1996] 3 SLR(R) 500 ("*Ginsin Holdings*"). In *Ginsin Holdings*, I held that there is no common law action for wrongful or illegal distress of goods in Singapore because:

> there is a judicial determination interposed between filing of the affidavit on which the writ is issued and the issue of the writ, and the issue of the writ is in consequence of that interposition and therefore persons acting without malice are protected.

(See *Ginsin Holdings* at [13] citing *Chop Chye Hin Chong*). This decision was based on the fact that since 1876, in Singapore, the law of distress had been embodied in legislation establishing a judicial process and the common law remedy relating to distress had been abrogated. In coming to this determination, I followed *Chop Chye Hin Chong*.

36 Also relevant is my observation in *Ginsin Holdings* at [14] that:

> There has been no change in the legal position since *Chop Chye Hin Chong v Ng Yeok Seng* was decided. Under the Act which in its original form as Ordinance 28 of 1934 was the successor to the Civil Procedure Code 1907 and is not substantively different from that Code, distress is a remedy which is obtained only after judicial intervention. It is not a self-help remedy as in England. Accordingly, although the Act follows the Code in not providing compensation for wrongful or illegal distress, an aggrieved tenant cannot fall back on the common law remedy of an action for damages per se. Instead he has to bring an action for malicious prosecution.

My decision in *Ginsin Holdings* was followed by the High Court in *Heng Chyu Kee v Far East Square Pte Ltd* [2001] 3 SLR(R) 651.

37 It has therefore been established law in Singapore since 1934 that a person aggrieved by a writ of distress obtained through a proper court process cannot sue the applicant for the writ on the basis of the common law cause of action for wrongful or illegal distress. The remedy for such an aggrieved person lies in an action for malicious prosecution.

38 In the present case, the statement of claim says explicitly at para 1 that the plaintiff's claim is "for wrongful or illegal distress of the [plaintiff's] properties". After reciting all the facts on which the action is based, the plaintiff ended in para 9 of the statement of claim by repeating its assertion that the defendants had committed distress on the equipment that was wrongful, unjustifiable or illegal. To me, the plaintiff's pleading indicates an action for wrongful or illegal distress rather than an action for malicious prosecution. On that basis, the plaintiff has no cause of action for the reasons given above.

39 In the course of the trial, the plaintiff attempted to amend its statement of claim by amending para 1 thereof and inserting a new para 10. If the amendments had been allowed, paras 1 and 10 would have read as follows:

> 1. The Plaintiffs' claim against all the Defendants for conversion and/or for wrongful or illegal distress of the Plaintiffs' properties as well as malicious prosecution against the Plaintiffs (distraining and selling Plaintiffs' equipment in total disregard of the Plaintiffs' rights and interest therein, which the Defendants were aware of at the material time).

10. Further or in the alternative, the Defendants have committed malicious prosecution against the Plaintiffs (distraining and selling Plaintiffs' equipment in total disregard of the Plaintiffs' rights and interest therein, which the Defendants were aware at the material time.

(Proposed amendments indicated by the underlined wording)

40 I disallowed the plaintiff's application. I considered that the proposed amended pleading was inadequate to sustain a cause of action in malicious prosecution. The plaintiff gave no particulars of the alleged malice and was relying only on the facts already pleaded in support of the action for wrongful distress to support its new cause of action. The plaintiff did not appeal against my dismissal of its application and the trial proceeded on the basis of the original pleadings.

41 It appears from the closing submissions, however, that the plaintiff considers that it can still make out an action for malicious prosecution although that cause of action was not expressly mentioned in the statement of claim. It submitted that the evidence showed that the defendants knew that the plaintiff was the owner of the equipment and as Afco applied under the Act on the basis that Alaskan Ice, and not the plaintiff, was the tenant, the defendants could not be said to have any honest intention or probable cause. In using the words "honest intention or probable cause", the plaintiff was referring to *Chop Chye Hin Chong*.

42 Reverting to *Chop Chye Hin Chong*, it is worth repeating the extract from that judgment relied on by the plaintiff (and quoted in [34] above) but putting it in the context in which it was said:

> It is a well established principle both with regard to civil and criminal matters that a person is not liable in damages for putting the law in motion unless he is actuated by malice. *It is the right of everyone to put the law in motion if he does so with the honest intention of protecting his interests but it is an abuse of that right if he proceeds maliciously and without reasonable and probable cause for anticipating success.* An example of this will be found in the difference that exists between an action for wrongful arrest and one for malicious prosecution. In the case of the first, where a man acts on his own initiative, proof of malice is not necessary to give a right to recompense by damages. In the case of the second, where the interposition of the Court is obtained, malice must be established. An example may again be found in the form of an action for abuse of ordinary civil process. Malice and absence of reasonable and probable cause must again be proved in the same manner as in an action for malicious prosecution (*Mitchell v. Jenkins*, 5 B. & Ad. 588)

In the above extract, I have italicised the language relied on by the plaintiff and underlined the portion which I think is equally relevant to put the plaintiff's claim in context.

43 It is clear from the underlined portion of the extract from *Chop Chye Hin Chong* that whilst in an action for wrongful distress no proof of malice is required, in a case for malicious prosecution arising from a distress executed by the court, malice must be established. This means that an allegation of malice must be specifically asserted and particulars of such malice must be pleaded and proved. The plaintiff failed completely to meet this requirement and it is too late at this stage for the plaintiff to recast its case and assert that the facts set out in the statement of claim would establish malice.

44 The particulars if provided would have given the defendants an opportunity to meet the plaintiff's case for malicious prosecution. As the plaintiff cast its claim as one for wrongful distress, the defendants had to deal with it on that basis and did so. It is likely that if the claim had been properly pleaded, the defendants would have made a different election in relation to the production of evidence. The plaintiff cannot take advantage of the defendants' decision not to adduce evidence, a

decision made on the basis that the case was a claim for conversion and wrongful distress, to now say that it has established malicious prosecution since the defendants have not produced any rebuttal evidence in relation to their contention that the evidence showed that Afco knew the plaintiff owned the equipment. As held by Lai Siu Chiu J in *Challenger Technologies Pte Ltd v Dennison Transoceanic Corp* [1997] 2 SLR(R) 618 at [60], the absence of reasonable and probable cause would not in itself lead inexorably to a finding that there was malice, and the nub of the matter was whether Afco had a genuine belief that there was a *bona fide* case against Alaskan Ice under the Act and was primarily motivated by a desire to vindicate its rights *qua* landlord of the premises. No doubt the defendants would have had to produce evidence to establish what Afco's genuine belief was at the material time. One of the reasons that they did not do so was that on the basis of the pleadings, it did not appear that Afco was facing a claim for malicious prosecution.

45 I am satisfied that the only causes of action that the writ herein disclosed were conversion and wrongful or illegal distress. There was no action for malicious prosecution and the plaintiff cannot now seek a verdict in its favour on the basis of such a cause of action.

Claim against the second and third defendants

46 As the plaintiff's claim against Afco has failed, its claim against the second and third defendants must fail too. In any event, I would have held that the second and third defendants could not be made personally liable for the actions of Afco. It is a basic principle of our law that a company has a separate legal personality from its directors and that its directors cannot be made personally liable for the actions of the company simply on the basis that they were the ones who procured such actions. One or more of certain grounds has to be established. There is no need for me to go into the law of lifting the corporate veil in this judgment. Suffice it to say that none of the grounds that would support a finding of personal liability on the part of the directors was either pleaded or proved by the plaintiff in relation to the second and third defendants.

Conclusion

47 The plaintiff's claim against all the defendants is dismissed with costs.

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