AP Moller-Maersk A/S (trading as Maersk Sealand) and Another v Special Entertainment Events, Inc and Others
[2005] SGCA 6

Case Number	: CA 105/2004
Decision Date	: 26 January 2005
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Lai Kew Chai J
Counsel Name(s)	: Govintharasah s/o Ramanathan and Stephanie Wong (Gurbani and Co) for the appellants; Kenny Yap and Leona Wong (Allen and Gledhill) for the first and second respondents; Michael Lai and Wendy Tan (Haq and Selvam) for the third and sixth respondents; Jainil Bhandari (Rajah and Tann) for the fourth and fifth respondents
Parties	: AP Moller-Maersk A/S (trading as Maersk Sealand); Maersk Singapore Pte Ltd — Special Entertainment Events, Inc

Civil Procedure – Interpleader – Appeals – Conflicting claims to cargo stored in PSA godown where storage charges accumulating – Shipowner seeking determination of conflicting claims and claiming payment of freight and other charges from party entitled to cargo – Interim order made requiring shipowner to release cargo upon security for freight and other charges being furnished – Shipowner being in effect required to pay storage charges upfront – Shipowner appealing against interim order – Whether order rightly made

26 January 2005

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 Two vessels, *Soroe Maersk* and *Sine Maersk*, owned and operated by the appellants, carried 117 containers of articles relating to the "Star Trek" themed exhibition ("the cargo" or "the goods" as may be appropriate) from the United Kingdom and Holland to Singapore. Upon the arrival of the cargo in Singapore, the appellants were not able to deliver the cargo because of apparent disputes among the respondents as to who was entitled to it. The cargo was thus stranded at the godown of the Port of Singapore Authority ("PSA") from April 2004 with substantial storage charges accumulating.

2 The appellants took out an interpleader summons to determine which of the respondents should be entitled to take delivery of the goods. The appellants also prayed for an order requiring the party, which was eventually adjudged to be entitled to the goods, to pay for the freight, demurrage, storage and other charges.

3 The summons came before Lai Siu Chiu J on 11 October 2004, who, having noted that substantial storage charges were mounting, made an interim order that pending the adjudication as to which of the respondents should be entitled to the cargo, the appellants pay up all outstanding storage charges due to the PSA. She also ordered that upon the sixth respondent, or any of the other respondents, furnishing security to the appellants covering freight, demurrage (in respect of 19 containers owned by the appellants) and PSA storage charges, the appellants were to release the cargo to the sixth respondent (or whoever provided the security) and the cargo was to be warehoused at 24 Jurong Port Road, Singapore 619097, to await the court's determination of the respondents' opposing claims to the cargo. A condition was imposed that if, by 20 October 2004 (extended to 9 November 2004 at the hearing of further arguments on 26 October 2004), none of the

respondents had come forward to furnish the security, the appellants could dispose of the cargo and the proceeds were to be deposited into court. For the purposes of the hearing of the substantive interpleader summons, Lai Siu Chiu J ordered that the fourth and fifth respondents would be the plaintiffs and the others, the defendants.

4 The first and second respondents were the owners of the goods. The third respondent was the agent of the sixth respondent who had, pursuant to an agreement entered into with the first and second respondents in December 2003, agreed to purchase the goods at a price of US$2.5m. The goods were then in Europe. Under the purchase agreement, the sixth respondent was to arrange for the transportation of the goods to Singapore. The third respondent appointed the fifth respondent to make the necessary arrangements to transport the goods from Europe. As the fifth respondent was located in Singapore, it, in turn, appointed the fourth respondent to handle the physical shipment of the goods from Europe to Singapore. In the bills of lading ("B/L"), the fourth respondent was named the shipper, and the fifth respondent, the consignee of the cargo.

5 The appellants objected to the order requiring them to pay the outstanding storage charges upfront to PSA in return for a security furnished by any of the respondents. They felt that the respondents should resolve the question of the storage charges directly with PSA and that the appellants should not be made a financier to the respondents. They said it was too onerous and inequitable a burden to require them to pay the PSA charges upfront, which was, in fact, the responsibility of the respondents. This was the main contention that came before Lai Siu Chiu J at the hearing of further arguments. However, the judge was not persuaded to change her mind.

6 It was against this aspect of the order that the appellants filed the present appeal. In the meantime, pursuant to further interlocutory applications, the order made by Lai Siu Chiu J was stayed pending the hearing of this appeal on an expedited basis. The appeal was heard on 25 November 2004 and was dismissed. The court also gave certain consequential orders. We now give our reasons for the dismissal.

The appellants' contention

7 It is settled law that a carrier has a lien over a cargo in respect of freight and reasonably necessary storage charges. The appellants argued that the respondents, as the persons entitled to the cargo, should pay the storage charges directly (or through the appellants) to the PSA to obtain delivery of the cargo. The appellants averred that they should not be made to pay the storage charges on the respondents' behalf as they did not owe any duty to the respondents to make such a payment. The appellants claimed that they had completed their contractual obligations by discharging the cargo into the PSA godown, as is the standard procedure at the Singapore port. They contended that it was the respondents' dispute amongst themselves that had placed the appellants in a bind. The appellants accepted that until the cargo was delivered to the person lawfully entitled to it, they were under a duty only to take reasonable care of the cargo. Except for this, they argued that they owed no further obligations to the consignee or any other person who had an interest in the cargo. In this regard, the appellants relied upon *Booth Steamship Company, Limited v Cargo Fleet Iron Company, Limited* [1916] 2 KB 570 to submit that, as each respondent had requested the appellants not to deliver the cargo to the other respondents, the respondents could only take delivery upon payment of storage charges to the PSA.

8 The appellants also argued that the order of 26 October 2004 was tantamount to the reallocation of rights and obligations of the parties in a manner inconsistent, not only with the law, but with the commercial realities of the matter, as such a reallocation of rights and obligations was

not and could not have been within the contemplation of the parties.

Our decision

9 It is not in dispute that a shipowner has a lien over a cargo for freight due in respect of the carriage of that cargo and all charges necessarily and properly incurred by him in discharging and warehousing the same: see *Harley v Gardner* (1932) 43 Ll L Rep 104.

10 In an ordinary case, upon the cargo being discharged into a PSA godown, the consignee would collect the goods after paying freight and the PSA storage charges, if any. However, in this case, there was a dispute among the respondents as to who should be entitled to the cargo. As far as the appellants were concerned, they only wanted to recover the freight charges and demurrage which were due to them. They had no interest in the cargo. However, it seemed to us that the appellants were also concerned about the escalating storage charges at the PSA which were billed by the PSA to them. If eventually no party should come forward to pay the storage charges and freight and take the cargo away, the appellants would have to pay the PSA. Whether in that event the appellants would have recourse against any other party is a separate matter altogether.

11 It is clear that the party, among the respondents, who is ultimately adjudged to be entitled to the cargo, will be required to pay the freight and all charges (including storage), which were reasonably incurred in relation to the cargo, before the cargo can be released to him. Not only is that the position under the common law, it was expressly so provided in the contract of carriage. Clause 17 of the B/L provided:

> The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions to whomsoever due. The Carrier shall also have a lien against the Merchant on the Goods and any document relating thereto for all sums due from him to the Carrier under any other contract. The Carrier may exercise his lien at any time and any place in his sole discretion, whether the contractual Carriage is completed or not. In any event any lien shall extend to cover the cost of recovering any sums due and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty, without notice to the Merchant. The Carrier's lien shall survive delivery of the Goods.

12 Clause 22.2 of the B/L provided that:

> The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff. If the Merchant fails to do so, the Carrier may without notice unpack the Goods if packed in containers and/or store the Goods ashore, afloat, in the open or under cover at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder and thereupon all liability shall cease and the costs of such storage shall forthwith upon demand be paid by the Merchant to the Carrier.

13 We should mention that the appellants had also referred to Part VII of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) which sets out a framework within which a shipowner, who has a lien over cargo for unpaid freight or other charges, may land the cargo and obtain payment of the same. However, while there is controversy as to whether the present case falls within Part VII of the Act, we need not have to go into this question at this juncture.

14 We appreciate that the appellants instituted these proceedings primarily to have the court

resolve the conflicting claims of the respondents to the cargo. However, it is vital to bear in mind that the order made by Lai Siu Chiu J was clearly interim in nature, with the object of saving storage costs pending the resolution of the respondents' opposing claims. It would benefit neither the appellants, nor the person ultimately adjudicated to be entitled to the cargo, to let the cargo remain any longer in the PSA godown in view of the high storage rate. The order would have the effect of halting the bleeding because the value of the cargo would diminish significantly for every day that it remained at the PSA godown. As we have alluded to earlier, if the sale proceeds were insufficient to meet the PSA charges, the PSA would have to look to the appellants for the shortfall.

15 It is understandable why the PSA's prescribed storage rates are high. The high storage rates are to discourage shipowners or consignees from leaving cargo at PSA premises for an inordinately long period because the space is required for the free flow of cargo traffic through the port.

16 The real question is: was the judge wrong to have made the order? In *BP Benzin und Petroleum AG v European-American Banking Corporation* [1978] 1 Lloyd's Rep 364, Lord Denning MR, in pronouncing on the court's jurisdiction in an interpleader proceeding, said at 366:

> It seems to me under the inherent jurisdiction of the Court, when an interpleader is taken out, the Court can make such order as it thinks just in the matter even though it does interfere with the rights of the parties if that is the just solution of the case. …
>
> … I think the jurisdiction of the Court, whether put under the rules or under the inherent jurisdiction, is ample for the Court to do what is right and just.

17 It was also not in dispute that the appellants had acted reasonably in discharging the cargo into the PSA godown. That has been the standard practice at the Singapore port. There is a 72-hour grace period where no storage charge will be levied, so as to enable consignees to collect their goods.

18 Unfortunately, in this case the respondents could not agree among themselves as to who should take delivery of the cargo. From the dates the two vessels arrived in Singapore, *ie*, on 14 and 21 April 2004 respectively, up to the date the appellants made the interpleader application, the appellants had informed the consignee, the fifth respondents, of the accruing PSA storage charges. On the other hand, the appellants had also received notices from each of the respondents specifically instructing the appellants not to release the cargo to any of the other respondents. Notwithstanding this impasse, the third and sixth respondents contended that the appellants should have moved the cargo to a private commercial warehouse where the charges would be much lower. This will be a question which will have to be addressed at the substantive hearing.

19 We do not think that by making the order, Lai Siu Chiu J had in any way affixed the appellants with the ultimate liability to bear the PSA storage charges. Neither had the judge by the order imposed a new obligation on the appellants. PSA had billed the appellants for the storage charges. The judge had not made an order that permanently affected the rights of the parties. She had merely, having regard to the circumstances of the case before her, thought it just and expedient that the appellants should first pay the storage charges. The positions of the respondents were not all the same. The first and second respondents alleged that under the sale and purchase agreement, title to the goods would only pass to the sixth respondent upon full payment and full payment had yet to be made. Neither were the first and second respondents shippers nor consignees of the cargo. Barring any reason otherwise, as a rule, the party who succeeds in showing that he is entitled to the delivery of the cargo, would have to pay the freight, the storage charges and all other costs and expenses reasonably incurred by the shipowner in relation to the cargo. Thus, to secure the interest

of the appellants, the judge also expressly ordered that the respondent who wished to have the cargo delivered to him should furnish to the appellants the required security to cover both the freight and the storage charges paid by the appellants to the PSA.

20 A case where the facts are quite close to the present is *Hanjin Shipping Co Ltd v Procter & Gamble (Philippines) Inc* [1997] 2 Lloyd's Rep 341 ("*Hanjin Shipping*"). There, the shipowner interpleaded in relation to the claims of the sellers of the goods, the buyers of the goods and the shipping agents. Faced with conflicting claims, the shipowner transferred the goods into bonded storage. The shipowner asked that the expenses which he had incurred be paid before he was required to release the goods. Longmore J agreed with the averment. However, in *Hanjin Shipping*, at the time the matter came before Longmore J, only the second and fourth defendants, who were acting in concert, came to stake their claims. There were no opposing claims to be adjudicated by the court. Thus, the cargo was released to them. In the circumstances in that case, there was no reason whatsoever for requiring the shipowner to pay up the storage charges first. Quite correctly, the two defendants were ordered to pay for the freight, storage and other charges before being allowed to collect the cargo.

21 However, in our present case, not only is the substantive interpleader issue yet to be determined, two of the respondents have also challenged the appellants' actions in allowing the cargo to remain in the PSA godown, thus incurring such high storage charges. These are issues that require further scrutiny. We recognise that the difficulties that arose in this case were not of the appellants' doing. Nevertheless, the effect of the order of Lai Siu Chiu J was no more than to replace the form of the security for the appellants' claim, *ie*, instead of the cargo, a banker's guarantee for the requisite amount was to be furnished. In all the circumstances, it was an eminently reasonable order. As Prof Jeffrey Pinsler noted in his work, *Singapore Court Practice 2003* (LexisNexis, 2003) at 426, "The court's discretion is limited only by considerations of justice." We cannot accept the appellants' assertion that the order of the judge set a dangerous precedent. What would be a reasonable interim arrangement must depend on the circumstances.

22 There was only one minor adjustment which we made to the order of Lai Siu Chiu J. In determining the amount of the security, we thought the finance cost to the appellants for paying the PSA storage charges should be included. This, we fixed at 6% per annum over a period of 18 months from the date of the hearing of this appeal. That period should be sufficient to cover the time required for the trial and any appeal therefrom. This variation should adequately compensate for any loss which the appellant will suffer on account of their having to pay the PSA storage charges upfront.

Appeal dismissed with slight variation to order below.