

Steelmet Pte Ltd v APL Co Pte Ltd and Another
[2000] SGHC 252

Case Number : Suit 1736/1999, RA 600283/2000
Decision Date : 27 November 2000
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Yang Lih Shyng with Goh Yin Dee (Khattar Wong & Partners) for the plaintiffs;
Loo Dip Seng with Goh Seng Chee (Ang & Partners) for the defendants; Toh Kian Sing (Rajah & Tann) for the interveners
Parties : Steelmet Pte Ltd — APL Co Pte Ltd; P & O Nedlloyd B V

application for summary judgment and the defendants filed an application for an order that the plaintiffs' statement of claim be struck out as disclosing no reasonable cause of action or as being scandalous, vexatious or frivolous. The plaintiffs' application for summary judgment was dismissed with costs whilst the defendants' application succeeded. The plaintiffs' statement of claim be struck out and the plaintiffs were given liberty to apply to amend their writ and statement of claim by 31 August 2000 failing which the action would stand dismissed. The plaintiffs appealed against both rulings.

Held

, dismissing the appeal:

(1) It was not clear what title the plaintiffs had in the goods after they endorsed the bills of lading in favour of the various banks. The documents they submitted showed a sale to the banks. This would mean that title to the goods would have passed to the banks at the same time. The banks and not the plaintiffs owned the goods. The position vis--vis the banks was not entirely explained and there was the possibility that the documents had been endorsed as security for advances rather than in order to pass title pursuant to the sale. If that was the case, then as the plaintiffs submitted, whilst the banks would have special property rights in the documents, the plaintiffs would retain their general property rights. Such general property rights would not, on the law, entitle the plaintiffs to immediate possession of the goods. It would therefore be the bank who had the immediate right to possession of the goods. Even if the plaintiffs retained the general property in the goods and the banks only acquired a special property in them for security purposes, it is clear that the persons with the right of possession would be the banks (See 14 – 17).

(2) The legal position is that to sue for conversion, it is not enough to be the owner of the goods at the time the suit is commenced; you must also be the person who had the right to possess the goods at the time they were converted or mis-delivered. In this case, the plaintiffs did not have an immediate right to possession of the goods at any time between 26 March 1999 and, at least, the end of October 1999. On 26 March, they endorsed the bills of lading to the three banks either on a sale or as security. It would therefore be the latter who had the immediate right to possession of the goods (See 18 and 19).

Legislation referred to

Bills of Lading Act (Cap 384) s 52

Judgment

GROUND OF DECISION

Background

1. In early 1999, the plaintiffs, a Singapore company, contracted to sell 1,900 bales of cotton knitted fabrics to an American buyer on CIF terms. It was agreed that the goods were to be sent to Port-au-Prince, Haiti and the documents forwarded to the buyer who would pay for them on sight of the documents.
2. In February 1999, the goods were shipped on board two vessels at Singapore. By the eight bills of lading issued in respect of the goods, the defendants, their servants and/or agents, acknowledged their shipment on board the respective vessels and undertook to carry the goods for reward from Singapore to Port-au-Prince, Haiti. For a reason that was not explained, although both shipments had been effected in February, six of the bills of lading were dated 22 March 1999 whilst the remaining two were dated 26 March 1999. The plaintiffs were named as the shippers of the goods on the bills of lading whilst the consignee was 'To order' and the notify party was named as 'Haiti Evans Corp'.
3. The plaintiffs did not deal directly with the buyers in order to obtain payment for the goods. Instead, they dealt with three sets of banks in Singapore to whom on 26 March 1999 they submitted their invoices, the original bills of lading, drafts drawn on the buyers and other relevant documents. These banks were Indian Overseas Bank, UCO Bank, Singapore and Bank of India, Singapore.
4. The plaintiffs submitted four sets of bills of lading and accompanying documents to UCO Bank together with a UCO Bank standard form by which they indicated that the documents were being submitted 'as collateral for an advance'. At the same time, the four bills of lading were endorsed by the plaintiffs to the order of UCO Bank. Three sets of bills of lading and accompanying documents were submitted to Indian Overseas Bank under cover of a form which stated that these documents were submitted for purchase subject to final payment. The bills of lading were endorsed to the order of Indian Overseas Bank. The eighth and final set of documents was submitted to Bank of India under cover of a similar form stating that the purpose of the submission was 'For purchase subject to final payment' and the bill of lading was endorsed to the order of the said bank.
5. The three banks then forwarded the respective documents in their possession to the buyers' bank, Broadway National Bank ('Broadway'), in New York, for the purpose of collecting the payment due for the goods. The bills of lading were endorsed in favour of Broadway by the respective Singapore banks. No payment was received for some months and, in October and November 1999, the Singapore banks wrote to the New York bank to enquire whether the bills drawn by the plaintiffs on the buyer had been paid. In November 1999, Broadway replied to state that payment had not been received.
6. In the meantime, the plaintiffs made enquiries with the defendants' local freight forwarding agent on the status of the goods. They were informed that all the goods had arrived at Haiti on dates at the end of March and in early April 1999. The plaintiffs subsequently discovered that the goods had been released to the notify party, Haiti Evans Corp, without production of the original bills of lading. The plaintiffs then sought to recover the bills of lading.
7. On 17 November 1999, Broadway forwarded four bills to UCO Bank which apparently received them on 22 November 1999. There is no evidence in the affidavits as to when these documents were in turn received by the plaintiffs. On 3 December 1999, Broadway forwarded three bills to Indian Overseas Bank which received them on 9 December 1999. These were apparently collected by the plaintiffs on 17 December 1999. The final bill of lading was forwarded to Bank of India by Broadway on 15 December 1999 and received by Bank of India on 20 December 1999. All the bills have now been re-endorsed in favour of the plaintiffs.

The proceedings

8. On 13 December 1999, the plaintiffs commenced this action against the defendants. The indorsement of claim on the writ described the plaintiffs' claim against the defendants as being for damages for breach of contract and/or duty as bailees and/or negligence of and/or conversion by the defendants in respect of the, inter alia, discharge and/or delivery of the plaintiffs' cargo

under the said bills of lading which breach resulted in loss and/or damage and/or mis-delivery and/or conversion of the cargo and consequential losses and damages being incurred by the plaintiffs as the owners of the cargo and/or the lawful holders of the bills of lading.

9. The defendants entered an appearance to the action in March 2000 and on 28 April, the defendants filed their statement of claim. In the statement of claim, the plaintiffs asserted that they were, at all material times, the owners of the cargo shipped on the two vessels and/or the consignees and/or the lawful holders of the eight bills of lading. They went on to plead that the defendants were under a duty to the plaintiffs as bailees and/or carriers and/or possessors for reward under the contract of carriage contained in or evidenced by the aforesaid bills of lading to deliver the goods at Port-au-Prince, Haiti, upon presentation of the bills of lading in the same quantity or amount as they were shipped.

10. By para 5, the plaintiffs asserted that it was an express and/or implied term of the contract of carriage that the defendants would only deliver the goods against surrender and/or presentation of the original bills of lading. In paras 6 and 7, the plaintiffs averred that in breach of contract and/or duty as bailees, the defendants failed to deliver the goods to the plaintiffs at Port-au-Prince, Haiti and/or had delivered them to Haiti Evans Corp or unknown third parties who were not entitled the same and had thereby wrongfully converted the goods and unlawfully interfered with the plaintiffs' right to immediate possession of the goods.

11. In May, the plaintiffs filed an application for summary judgment. Two months later, the defendants filed an application for an order that the plaintiffs' statement of claim be struck out as disclosing no reasonable cause of action or as being scandalous, vexatious or frivolous. Both applications were heard by the Senior Assistant Registrar on 15 August. In the result, the plaintiffs' application for summary judgment was dismissed with costs whilst the defendants' application succeeded. The order made was that the plaintiffs' statement of claim be struck out and the plaintiffs were given liberty to apply to amend their writ and statement of claim by 31 August 2000 failing which the action would stand dismissed. The plaintiffs appealed against both rulings.

12. The appeals came on for hearing before me. Since the plaintiffs' appeal on the application for summary judgment could not proceed unless they were successful in their appeal against the striking out order, the first appeal was adjourned sine die with liberty to restore. I then heard the appeal against the striking out order. I dismissed this appeal with costs. The plaintiffs are dissatisfied with my decision.

Arguments presented on appeal

13. The defendants' original application was premised on the ground that the plaintiffs at all material times had no rights to the immediate possession or delivery of the goods alleged to have been converted or wrongly delivered by the defendants. This was because when the alleged mis-deliveries took place on 30 and 31 March 1999 and on 12 April 1999, the plaintiffs were not in possession of those eight bills of lading and as such were in no position to call for the delivery of the goods to them on those dates. Further, the plaintiffs had no title to sue because at the time of commencement of the action ie 13 December 1999, they were not the lawful holders of the bills of lading. Below, the plaintiffs contested both those assertions.

14. On appeal, however, the plaintiffs conceded that when the writ was filed, they had no title to sue under the Bills of Lading Act (Cap 384) ('the Act') as they were not then the 'holder' of the eight bills of lading as defined by s 52 of the Act. They also conceded that mere ownership of goods would not give them title to sue the carrier. The plaintiffs submitted, however, that even though they did not have title to sue under the contract of carriage, as owners of the goods they had a right to sue the defendants in tort for negligence (para 8 of the statement of claim), independent of the contract of carriage contained in the bills of lading. In view of the existence of such claim in negligence, the action should not have been struck out.

15. The plaintiffs relied on the well established principle that the legal owner or person with possessory title to goods at the time of the tort complained of can sue. They submitted that at the time the defendants negligently mis-delivered the goods, they were the legal owners or persons with possessory title to the goods. In April 1999, when the negligent release of the goods took place, all eight bills of lading were lying with the Broadway for collection. Broadway was the collection agent of the three

Singapore banks. Of the eight bills of lading, three had been purchased by Indian Overseas Bank and four by UCO Bank on terms which allowed them to have recourse to the plaintiffs. The remaining bill of lading had been handed to Bank of India for collection. The plaintiffs submitted that notwithstanding their sale of the seven bills to the banks concerned, they still have property in the goods and were entitled to possession of the goods. They submitted that since the sale had been 'with recourse' ie meaning that the two banks concerned could require them to repurchase the documents, they retained the general property in the goods and Indian Overseas Bank and UCO Bank only acquired a special property in the goods for security purposes.

16. I had some doubt as to what title the plaintiffs had in the goods after they endorsed the bills of lading in favour of the various banks. The documents they submitted appeared, to me, to show a sale to the banks. This would mean that title to the goods would have passed to the banks at the same time. The fact that the banks had purchased 'with recourse' meant that the banks could require the plaintiffs to repurchase the documents from them. If the banks exercised that right and the repurchase took place, title would then pass back to the plaintiffs. Until then, however, it appeared to me that the banks and not the plaintiffs owned the goods. The position vis-à-vis the banks was not entirely explained and there was the possibility that the documents had been endorsed as security for advances rather than in order to pass title pursuant to the sale. If that was the case, then as the plaintiffs submitted, whilst the banks would have special property rights in the documents, the plaintiffs would retain their general property rights.

17. The position therefore appeared to be that either the plaintiffs were not the owners of the goods between 26 March 1999 and whenever it was in November/December 1999 when the bills of lading were re-endorsed to them, or that during this period the plaintiffs had, at the most, retained general property rights which were subject to the special property rights of the banks. Such general property rights would not, on the law, entitle the plaintiffs to immediate possession of the goods.

18. The legal position is that to sue for conversion it is not enough to be the owner of the goods at the time the suit is commenced: you must also be the person who had the right to possess the goods at the time they were converted or mis-delivered. The applicable principles are well set out in the following paragraphs from *Clerk & Lindsell on Torts* (17th Ed):

'13-51 Plaintiff must have possession or immediate right to possession. The general rule is that a person has title to sue for conversion if and only if he had, at the time of the conversion, either actual possession or the immediate right to possess. It is not necessary to prove a title of absolute ownership, and indeed the owner may not sue unless he either possesses or has the immediate right to possess. So a purchaser of goods in whom the title is vested cannot sue for conversion until he pays or tenders the price and thus becomes entitled to possession. Conversely, there is no reason why one with an interest less than ownership, such as a pledgee or the owner of an undivided half-share, should not sue in conversion.

13-52 Plaintiff's right must exist at the time of conversion. The right on which the plaintiff relies must have existed *at the time of the alleged conversion*: a right to the goods obtained at some other time will not suffice. Thus in *The Future Express* the buyer of a cargo of wheat agreed with his bank that bills of lading should be made out to the bank's order and put in its hands as soon as they arrived from the sellers. The buyer subsequently persuaded the carriers, with the assent of the sellers, to deliver direct to him. He took the cargo, sold it and decamped with the

proceeds. Later still the sellers sent the bills of lading to the bank. The Court of Appeal held that the bank could not sue the carriers in conversion for delivering contrary to the terms of the bill of lading; at the time that delivery took place, the bank had no right whatever in the goods.

...

13-77 Immediate right to possession. As mentioned above, an owner cannot sue in conversion unless he shows either possession or an immediate right to it. Thus if goods are let or pledged, the hirer or pledgee, as the case may be, has the exclusive custody and consequently the sole right of action until the contract is determined. In such cases, therefore, the owner has no right of possession, and cannot sue in conversion. If goods are held subject to a lien, the owner's right is of necessity excluded, and the possessor is therefore the only person who can bring the action. If a chattel is mortgaged on the terms that until default it shall be lawful for the mortgagor to hold and enjoy the chattel, the mortgagee cannot maintain trespass or conversion before default, since he has no present right of possession.'

19. In this case, the plaintiffs did not have an immediate right to possession of the goods at any time between 26 March 1999 and, at least, the end of October 1999. On 26 March, they endorsed the bills of lading to the three banks either on a sale or as security. It would therefore be the latter who had the immediate right to possession of the goods. Even if, as the plaintiffs submitted, the plaintiffs retained the general property in the goods and the banks only acquired a special property in them for security purposes, it is clear from the extract from *Clerk & Lindsell* that the persons with the right of possession would be the banks. In my judgment, the plaintiffs did not have the right to sue the defendants in tort for conversion of the goods in March and/or April 1999. Their appeal therefore had to be dismissed.

Sgd:

JUDITH PRAKASH
JUDGE