IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 184

Suit No 739 of 2019 (Assessment of Damages No 4 of 2020)

Between

ST Building Solutions Pte Ltd

… *Plaintiff*

And

FortyTwo Pte Ltd

… *Defendant*

JUDGMENT

[Damages] — [Assessment]

ST Building Solutions Pte Ltd
v
FortyTwo Pte Ltd

[2020] SGHC 184

High Court — Suit No 739 of 2019 (Assessment of Damages No 4 of 2020)
Choo Han Teck J
9 June 2020; 14 July 2020

1 September 2020 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a Singapore-incorporated company in the business of, *inter alia,* supplying partition and ceiling boards. From 1 May 2016 to 31 May 2019, the plaintiff leased a first-floor warehouse unit (the "Unit"), one floor directly below the defendant's unit. The plaintiff used the Unit to store various goods. The defendant is also a Singapore-incorporated company.

2 Sometime between 10 and 11 February 2019, a fire hose in the defendant's unit started to leak, causing water to overflow into and flood the plaintiff's Unit below (the "incident"). Shortly after, on 12 February 2019, the plaintiff notified its insurer's appointed loss adjusters, McLarens Singapore Pte Ltd ("McLarens"). On McLarens' advice, the plaintiff prepared a list recording, *inter alia*, the descriptions and quantities of various goods that had allegedly been damaged by the flooding ("Draft List").

3 On 22 February 2019, the plaintiff and McLarens conducted a joint inspection of the damaged goods and McLarens supposedly "verified" the Draft List. In an email dated 27 February 2019, McLarens informed the plaintiff that three types of goods in the Draft List were "not available/found" during the joint inspection, and that the quantity of another "damaged" item should be higher. The plaintiff made the necessary amendments and emailed McLarens an amended list of 58 types of "damaged" goods ("Initial List"). McLarens raised no further comments thereafter. The plaintiff later realised that it had erroneously classified two different types of boards as a single type, and corrected the Initial List. The corrected Initial List is referred to as the "Final List", and it contained 59 different types of "damaged" goods.

4 On 14 March 2019, the plaintiff informed the defendant that it would be seeking recovery for its losses, and invited the defendant to appoint its own loss adjuster to independently verify the damage caused to the plaintiff's goods by 21 March 2019. The defendant, however, did not inspect the damaged goods, and the plaintiff's subsequent demands for compensation yielded no result. The plaintiff eventually disposed of the damaged goods between end-April and early-May 2019, close to the end of its lease of the Unit.

5 On 22 July 2019, the plaintiff commenced this Suit to recover the losses it allegedly suffered as a result of the incident. The defendant conceded liability, and interlocutory judgment was accordingly entered in favour of the plaintiff on 24 October 2019. My present judgment concerns the assessment of damages payable by the defendant to the plaintiff. The plaintiff claims, in tort, "damages to be assessed", including the following specific losses totalling $559,500.96. The breakdown of this sum is set out below:

No.	HEAD OF LOSS	QUANTIFICATION
1	Loss in respect of the goods that were damaged	$446,687.49
2	Freight forwarding costs wasted in the importation of the goods damaged in the incident	$13,455.50
3	Loss in respect of the film wraps and polyethylene ("**PE**") sheets that had to be disposed of	$996.00
4	Loss in respect of pallets that were damaged in the incident and had to be disposed of	$1,356.60
5	Waste disposal fees incurred to dispose of the damaged goods	$59,400.00
6	Labour costs incurred to dispose of the damaged goods	$15,249.15
7	Loss of use of the Unit	$22,356.22
	TOTAL:	$559,500.96

6 Compensation in tort is intended to place the plaintiff in the same position it would have been in had the tort not been committed. The burden of proof lies on the plaintiff to establish, on a balance of probabilities, both the fact of damage and its quantum (*Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 *("Robertson Quay*") at [27]).

7 I start with the plaintiff's first head of loss in respect of its damaged goods, which amounts to $446,687.49. The central question in this case is this

— what damage did the flooding of the Unit cause to the plaintiff's goods? All of the plaintiff's other heads of loss depend, to some extent, on the answer to this question. That answer requires evidence not only as to the description and quantities of goods damaged, but also the extent of the damage to each item.

8 The plaintiff's evidence for this head of loss is as follows. The plaintiff says that the quantities of damaged goods are as recorded in the Final List, which was based on the Initial List. As to the extent of the damage to its goods, the plaintiff's position is that all the goods recorded in the Initial and Final Lists were damaged to such an extent that they had "no residual market value". The plaintiff's loss adjuster, Mr Ong Leong Koen, prepared an expert report concurring with this position based on various letters from the plaintiff's suppliers ("Supplier's Letters") as well as photographs showing the flooding within the Unit ("Photographs").

9 After the incident, the plaintiff had informed its suppliers that the goods supplied to it had been exposed to standing water due to the leakage of the Unit's roof. In the Supplier's Letters, the suppliers all generally stated that exposure to moisture would lead to damage of the goods in question (*ie,* due to rusting, or the development of mould/fungus), and/or that the goods were sensitive to moisture. All the suppliers thus recommended that the exposed goods be disposed of. As for the Photographs, they generally showed stacks of the plaintiff's goods standing in water in the Unit.

10 Relying on the above evidence, the plaintiff says it has answered the central question mentioned above. It argues that it is entitled to recover the difference in the market value of its damaged goods immediately prior to, and after, the incident. Taking the quantities of the "damaged" goods in the Final

List at face value, Mr Ong's report assessed the total market value of the "damaged" goods prior to the incident to be $446,687.49. Mr Ong agreed with the plaintiff that the said goods had no residual market value, and the plaintiff thus claims the entire sum of $446,687.49.

11 The defendant has adduced no evidence as to the actual quantities of the plaintiff's goods that were damaged, and the extent of the damage to each item. This is perhaps unsurprising given that the defendant did not even physically inspect the plaintiff's goods. The defendant's case is simply that the plaintiff has not discharged its burden of proving the fact and quantum of any of its losses. Both the defendant, and the expert report of its loss adjuster, Mr Seng Kian Tiong, focus on pointing out the deficiencies in the plaintiff's evidence, especially in respect of the extent of the damage to the plaintiff's goods. Neither offers an alternative figure for any of the losses claimed. In the circumstances, the central question falls to be decided mainly upon the strength of the plaintiff's evidence.

12 In my view, the plaintiff has failed to discharge its burden of proving the quantum of the damage caused to its goods. I start with the Initial and Final Lists. Although these two lists purport to record the quantities of "damaged"/ "wet" goods at the time of the incident, the plaintiff's difficulty is that it has not provided any basis (in the lists or otherwise) to show that its goods were actually "damaged" or "wet" in the quantities recorded. Its process of inspection in compiling the lists is a mystery. It is unclear, for example, whether a visual and/or physical inspection had even been performed before the plaintiff concluded that each quantity of goods recorded in the lists was in fact "damaged" or "wet".

13 Importantly, the Photographs show that many of the plaintiff's goods were wrapped in packaging, film wrap and/or PE sheets at the time of the incident. At trial, Mr Lee's evidence was that if there was "water [on the] outside" of such wrapped goods, "it definitely means whatever is inside is damaged". I am prepared to accept that in certain cases, one could ascertain that the goods in question are wet without removing its wrapping (*ie,* where the wrapping is transparent and there are visible water marks on the goods inside). Even then, however, it is not clear that one could always do so. The plaintiff failed to show with any specificity that it had properly inspected its wrapped goods. There is no evidence as to:

(a) the actual quantities of goods that were wrapped in packaging and/or protective wrapping;

(b) whether the state of the goods or wrapping in question in fact allowed one to ascertain that the goods inside were wet without removing the wrapping; and

(c) if it did not, whether the plaintiff actually removed the wrapping before concluding that the goods inside were "damaged" or "wet".

14 The person who had prepared the Initial and Final Lists, the plaintiff's financial manager, was not called as a witness. The plaintiff's managing director, Mr Lee Yong Seng, testified at trial that he had "checked" the Initial and Final Lists, but gave no details as to how he did so. Although McLarens had supposedly "verified" the quantities of "damaged" / "wet" goods in the Draft List during its inspection, there is similarly little evidence as to what McLarens did to carry out that "verification". The plaintiff omitted to call McLarens to give evidence at trial, stating that there was "simply no need to do so" because

"[t]he evidence clearly shows that McLarens had conducted a physical inspection of the [damaged goods]". That "evidence", however, is merely the email exchange between the plaintiff and McLarens referred to at [3] above. Nothing there describes what McLarens did during the joint inspection. In light of all these deficiencies in the plaintiff's evidence, I am not satisfied that the plaintiff's goods were actually damaged or wet in the quantities recorded in the Initial and Final Lists.

15 Turning to the Photographs, many of them depict the plaintiff's goods in the Unit stacked atop wooden pallets. Generally, only the bottom pallets and goods were shown to be in direct contact with water. As mentioned, many goods were wrapped in packaging, film wrap and/or PE sheets and it is unclear if the goods inside were actually wet. At the most, all that the Photographs show is that some of the plaintiff's goods had been wet due to the flooding. But this is not disputed. What is disputed is the actual quantities of goods that had been wet, and the extent of wetting caused to each item. The Photographs, however, do not assist in determining this issue, because the plaintiff did not specifically link any of the Photographs to what it alleged to be a particular "damaged" item, or to specific quantities of goods recorded as "damaged" in the Initial and Final Lists.

16 As for the Supplier's Letters, the suppliers' replies (as set out at [9] above) are based on the premise that the goods they had supplied had actually been exposed to water. However, save for one supplier, Promat Building System Pte Ltd ("Promat"), none of the others physically inspected the goods in question. During Promat's inspection, "fungal growth" was found on the KALSI Boards that Promat had supplied to the plaintiff. Although I accept that

the boards were indeed damaged, it is unclear whether all the KALSI Boards that had been recorded as "damaged" in the Initial and Final Lists were actually shown to Promat. There is little evidence as to what Promat did during its inspection, and the plaintiff's only witness of fact, Mr Lee, was not even present at that inspection. As such, I do not think any of the Supplier's Letters evidence the actual quantities of goods that had been damaged/wet, and the extent of the damage/wetting caused to each item.

17 In *Robertson Quay* ([6] *supra*), the Court of Appeal held (at [27]-[31]) in relation to proof of damages:

> 27 … [I]t is fundamental and trite that a plaintiff claiming damages must prove his damage. … *[T]he proof of damage depends wholly on the factual matrix concerned. …*
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> 28 The law, however, does not demand that the plaintiff prove with complete certainty the exact amount of damage that he has suffered. Thus, the learned author of *McGregor on Damages* continues as follows (at para 8-002):
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> > [W]here it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages. …
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> …
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> 30 Accordingly, *a court has to adopt a flexible approach* with regard to the proof of damage … The correct approach that a court should adopt is perhaps best summarised by Devlin J in the English High Court decision of *Biggin & Co Ltd v Permanite, Ltd* [1951] 1 KB 422 ("*Biggin*"), where he held (at 438) that:
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> > *[W]here precise evidence is obtainable, the court naturally expects to have it. Where it is not, the court must do the best it can.*
>
> …
>
> 31 To summarise, *a plaintiff cannot simply make a claim for damages without placing before the court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages.* On the other hand, *where the plaintiff has*

> *attempted its level best to prove its loss and the evidence is cogent, the court should allow it to recover the damages claimed.*
> …
>
> [emphasis in original omitted; emphasis added in italics]

18 In my view, more cogent evidence as to the quantities of damaged goods, and extent of the damage to each item, ought to have been available. Nothing in the nature of such property damage makes the assessment of damage difficult or impossible. There was no good reason why none of the loss adjusters, including McLarens, made an assessment as to the extent of the damage/wetting caused to each of the plaintiff's goods. The plaintiff's and the defendant's loss adjusters, who gave evidence at trial, never even physically inspected the damaged goods themselves. The plaintiff had also given the defendant ample opportunity from 14 March 2019 to inspect the damaged goods. The defendant, however, failed to do so and never explained its omission.

19 Further, nothing suggests that the plaintiff had faced any practical difficulties at the time of the incident, which may have hindered a proper assessment of the damage. Even if such difficulties did exist, they still do not explain (a) the plaintiff's subsequent omission to call McLarens to give evidence at the trial itself (*ie,* regarding the joint inspection, and what McLarens had seen); and (b) the plaintiff's failure to explain how it concluded that each quantity of goods in the Initial and Final Lists was in fact "damaged" or "wet". Although I find the conduct of both parties to be unhelpful in determining the quantum of the damage caused by the incident, the burden of proving such quantum ultimately lies upon the plaintiff. I do not consider that the plaintiff has "attempted its level best" to discharge that burden. As the plaintiff's figure of $446,687.49 is premised upon the quantities of "damaged" goods in the Initial

and Final Lists, and those quantities are not proven, the claim for $446,687.49 must therefore be dismissed.

20 I now turn to the freight forwarding costs (totalling $13,455.50) that the plaintiff allegedly incurred in importing the goods that were damaged during the incident. The plaintiff claims these costs on the basis that they are "expenses wasted or thrown away" due to the incident. In my view, this claim is misconceived. As mentioned, an award of damages in tort is meant to place the plaintiff in the same position it would have been in had the tort not been committed. Had the tort not been committed, the plaintiff would have all its goods intact, and would still have had to incur these freight forwarding costs in any event. As I will discuss below, I am prepared to award the plaintiff general damages for its loss in respect of its damaged goods. I do not think there is any basis in principle for the plaintiff to also demand that the defendant absorb its costs of importing the said goods. In any case, even if such freight forwarding costs are recoverable in principle, the quantum incurred as a result of the incident has not been sufficiently proven. The sum of $13,455.50 was calculated based on the quantities of "damaged" goods in the Initial and Final Lists. As I do not accept those quantities as proven, the quantum for this head of loss is not established either.

21 Moving on, the plaintiff also claims its alleged loss in respect of a number of second-hand wooden pallets that had been damaged during the incident. The plaintiff is in principle entitled to recover this loss under the general rule for awarding damages in tort (see [6] above). Given that several Photographs show the plaintiff's pallets submerged (at least partially) in water, I accept that the plaintiff did incur some loss in respect of the pallets. I do not,

however, think the quantum for this head of loss is proven as claimed. The plaintiff quantified this loss at $1,356.60 based on the Initial and Final Lists, which recorded 357 pallets as being "damaged by water", and all of the said pallets being damaged beyond salvage. In my view, the plaintiff failed to sufficiently establish that its pallets were damaged in that quantity, or to that extent. This is because, similar to the reasons given in [12] and [14] above, the plaintiff failed to sufficiently explain how it went about inspecting and counting its pallets to determine that they were in fact "damaged", or what McLarens did to verify the same. The claim for $1,356.60 is thus dismissed.

22 The plaintiff further claims its alleged loss in respect of the film wrap and PE sheets used to wrap the damaged goods and pallets. It originally estimated that 72 rolls of PE sheets and 119 rolls of film wrap had been used to wrap the 357 pallets on which the damaged goods were stacked. The plaintiff said that after the incident, the film wraps and PE sheets had to be torn apart to separate the damaged goods for disposal off-site. Since the torn wraps and sheets could not be re-used and had no residual value, the plaintiff disposed of them. As Mr Ong could not verify the plaintiff's estimated quantities of film wraps and PE sheets used, he halved the estimate and quantified this loss as $996.

23 In my view, this loss would also be recoverable in principle under the general rule for awarding damages in tort. I do not, however, think that the quantum of the loss has been proven. The plaintiff's and Mr Ong's estimates are premised on there being 357 damaged pallets. Having rejected this premise at [21] above, I also reject the plaintiff's and Mr Ong's estimates, and therefore the quantification of this loss at $996. In any event, the plaintiff failed to explain

the methodology behind its estimates, such that even Mr Ong was unable to verify the accuracy of the same.

24 Next, I will deal with the plaintiff's claims for the waste disposal fees and labour costs incurred in disposing of the damaged goods together. In principle, these consequential losses are recoverable in order to place the plaintiff in the same position it would have been in had the tort not been committed. The plaintiff produced invoices issued by two waste disposal companies, and waste disposal certificates confirming that between end-April to early-May 2019, the plaintiff had sent "damaged goods", mainly consisting of "ceiling boards, kalsi boards and other miscellaneous items", for disposal. I am satisfied that this general description included the various types of goods damaged as a result of the incident and that the plaintiff did incur some waste disposal fees to dispose of the damaged goods.

25 The plaintiff also gave evidence that it was required by the waste disposal companies to tear apart any protective wrapping around the damaged goods, and to separate the different types of materials before placing them into the skip bins provided. As the plaintiff did not have sufficient manpower, it hired workers from another company to undertake this labour-intensive task. The plaintiff was issued an invoice for labour expended during roughly the same period of time as stated on the waste disposal certificates. I accept the plaintiff's evidence (as I have just set out) and find that it did incur some labour costs in disposing of the damaged goods.

26 I do not, however, think that the plaintiff has sufficiently proven the quantum of waste disposal fees and labour costs incurred as a result of the incident. The plaintiff's case is that it had incurred $59,400 in waste disposal

fees and $15,249.15 in labour costs in order to dispose of the 119,793 items and 357 pallets recorded as "damaged" in the Final List, as well as torn film wrap and PE sheets. Since I do not accept the quantities as stated in the Final List, or the plaintiff's/Mr Ong's estimated quantities of film wrap and PE sheets used, I find that the plaintiff has also failed to prove that it incurred consequential losses in waste disposal fees and labour costs of $59,400 and $15,249.15 respectively.

27 The plaintiff also argues that it was unable to use part of the Unit's floor space for a period of time as a result of the incident. To quantify this loss, the plaintiff took the monthly rent of the Unit of $25,000, and pro-rated it according to the number of days of its alleged loss of use, and the proportion of the Unit's floor space which allegedly could not be used. It claims $22,356.22 for this head of loss, which sum comprises the following:

(a) $1,643.84 for the loss of use of 90% of the Unit's floor space during the two days in which the Unit was flooded and had to be dried. Based on the plaintiff's own method of calculation, there appears to be an arithmetic error and the dollar figure should be $1,479.45 (*ie*, $25,000 x 12 months / 365 days x 2 days x 90%).

(b) $20,712.38 for the loss of use of 30% of the Unit's floor space for another 84 days from 11 February to 5 May 2019. The plaintiff says due to the incident, it had to store the damaged goods in a different part of the Unit, and they occupied 30% of the Unit's floor space until they were finally disposed of. Again, the plaintiff made an arithmetic error in calculating the dollar figure, and it should be $20,712.33 (*ie,* $25,000 x 12 months / 365 days x 84 days x 30%).

28 I accept that the plaintiff was unable to use 90% of the Unit's floor space for two days as it had to segregate the damaged and undamaged goods, as well as clean and dry out the Unit. This is a perfectly realistic and reasonable claim, given that the entire Unit had been flooded, the plaintiff had relied on fans to dry the floor and the sheer number of goods in the Unit as depicted in the Photographs. I also find the plaintiff's method of quantification to be generally fair. I will thus award an adjusted sum of $1,607.14 (*ie,* $25,000 / 28 days x 2 days x 90%) for this claim.

29 On the other hand, I do not think that the fact and quantum of the loss at [27(b)] above has been proven. I accept that after the incident, the damaged goods occupied a certain amount of floor space in the Unit. However, even if the incident had not occurred, the same goods would have continued to occupy floor space anyway. What the plaintiff needs to show is that:

(a) in normal circumstances, storing all of the plaintiff's goods in the Unit would have used a certain amount of floor space; and

(b) due to the incident, the plaintiff's undamaged and damaged goods had to be separately stacked in such a way that an additional 30% of floor space had to be used.

30 The plaintiff failed to show this, with only a bare assertion by its counsel, Mr Benedict Teo, that the damaged goods could not be "stack[ed]…in the same way as though it [was] business as usual". In any event, the plaintiff's case for claiming $20,712.38 is based on the premise that the quantities of damaged goods and pallets as recorded in the Final List required 30% of the Unit's floor

space. As I do not accept those quantities as proven, the quantum of $20,712.38 is also not proven.

31 Finally, I turn to the issue of mitigation. The defendant argues that the plaintiff had failed to mitigate its losses resulting from the incident. Its counsel, Mr Charles Phua, submitted that the plaintiff could have reduced its losses if it had, *inter alia,* undertaken "dehumidification works" and "considered alternative buyers for the [damaged] goods…at a lower price". As Mr Teo correctly pointed out, however, the defendant did not even plead the issue of mitigation. Mr Phua made no attempt to explain this omission or argue that the plaintiff nonetheless had sufficient notice of the defendant's case or had otherwise suffered no prejudice. Given the materiality of the issue and the defendant's lack of explanation, I do not think the defendant is entitled to raise any arguments on this point.

32 Having addressed the specific sums claimed by the plaintiff in the table at [5] above, I now deal with the issue of general damages. It is clear from the plaintiff's evidence, including the Photographs, that it has suffered substantial loss as a result of the incident. I have found that the plaintiff is entitled in principle to recover its losses in respect of its damaged goods, pallets, film wrap and PE sheets, as well as the waste disposal fees and labour costs incurred in disposing of the same. I have also found that the fact of the said losses has been proven, although the quantum which the plaintiff claims (totalling $523,689.24) has not. In particular, the plaintiff claims $446,687.49 in respect of the damage to its goods, but it has not proven this sum because it is evident from the Photographs that some of the goods in the Unit were not damaged. How much was actually damaged is uncertain for lack of proof. In the circumstances,

however, I do not think it would be fair to award the plaintiff only nominal damages in respect of the losses which I have just mentioned. It seems to me that the damage caused may be a little over 50% or it might be a little under 50% of the quantum of $523,689.24 claimed. Taking all the evidence into account, I am of the view that $250,000 in general damages would be a reasonable sum to compensate the plaintiff for its losses in respect of the damaged goods, pallets, film wrap and PE sheets, as well as the waste disposal fees and labour costs incurred.

33 I thus grant judgment for the plaintiff against the defendant for $251,607.14 (being the sum of $250,000 plus $1,607.14). Under s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed), interest thereon will run from the date on which the writ was issued to the date of this judgment, at 5.33% per annum.

34 Costs are to be fixed after submissions by the parties, to be filed within 14 days from the date of this judgment.

- Sgd -
Choo Han Teck
Judge

Teo Chun-Wei Benedict, Goh Wee Hsien Jason, Ng Weiliang Daniel
(Drew & Napier LLC) for the plaintiff;
Phua Cheng Sye Charles, Vanessa Ann Leong Hui Ling (PKWA
Law Practice LLC) for the defendant.