Panwell Pte Ltd and Another v Indian Bank
[2002] SGHC 219

Case Number : Suit 422/2001, RA 180/2002, 199/2002

Decision Date : 19 September 2002

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Sushil Nair , Manoj Sandrasegara and Yarni Loi (Drew & Napier LLC) for the plaintiffs; Tan Teng Muan and Wong Khai Leng (Mallal & Namazie) for the defendants

Parties : Panwell Pte Ltd; Another — Indian Bank

Damages – Assessment – Conversion – Relevant date for assessment of damages – Whether court can assess damages at date of judgment instead of date of conversion – Plaintiffs' duty to mitigate loss notwithstanding conversion

notes as at the date of judgment instead of the value as at the date of conversion. As an ancillary argument, he submitted that there was no evidence upon which the assistant registrar could have arrived at the value of 34% of the face value of the notes. The defendants also submitted that the assistant registrar was wrong to award the quarterly payments to the second plaintiffs.

Held

, allowing the defendants' appeal in part:

The basic premise, is to compensate the plaintiff as best as possible for the loss or damage he suffers by reason of the conversion. The loss or damage ought, therefore, as far as possible to be determined as at the date of the conversion because that would be the fairest and most accurate measure. The plaintiff is obliged to purchase his damaged goods in the market if there is a market. The plaintiffs' damages should therefore have been assessed as at the date of conversion at the rate of 32% of the face value of the notes; that being the known transacted price for the said notes on that day. The plaintiffs were also entitled to the quarterly payments but only those due at the date of the conversion (See 9 – 10, 12).

Case(s) referred to

Brandeis Goldsmidt & Co v Western Transport Ltd

[1981] QB 864 (refd)

IBL Ltd v Coussens

[1991] 2 AER 133 (distd)

Mercer v Jones

(1825) 1 C&P 625 (refd)

Sachs v Miklos

[1948] 2 KB 23 (refd)

The Endurance

[1991] 1 SLR 661 (flld)

Judgment

GROUNDS OF DECISION

1. This was an appeal by the defendants against the assessment of damages by the assistant registrar below. The plaintiffs had sued the defendants for conversion of Central Bank of Nigeria promissory notes ("CBN notes") which were placed as security with them by the first plaintiffs. The first plaintiffs were the original owners who subsequently assigned the notes to the second plaintiffs. The defendants were found liable by the trial judge. The court held that the second plaintiffs were entitled to damages. The defendants' counterclaim was dismissed and costs awarded against them to both plaintiffs. The judgment was handed down on 17 October 2001 and the defendants' appeal to the Court of Appeal was subsequently dismissed. The conversion was committed on 19 March 2001.

2. The assistant registrar assessed damages at US$2,380,000.00 as well as US$839,407.82 (quarterly payments) due under the CBN notes from the date of conversion to the date of assessment. The assessment was adjudged on 17 July 2002.

3. Mr Tan submitted on appeal that the assistant registrar was wrong in assessing the value of the CBN notes as at the date of judgment instead of the value as at the date of conversion. As an ancillary argument, he submitted that there was no evidence upon which the assistant registrar would arrive at the value of 34% of the face value of the notes. Secondly, Mr Tan submitted that the assistant registrar was wrong to award the quarterly payments to the second plaintiffs.

4. A brief account of the CBN notes is useful for a proper understanding of the nature of this appeal. The Nigerian government issued the CBN notes which would expire in 2010 and, therefore, by that time the notes would be valueless. In the meantime, quarterly payments (also referred to as 'instalment payments') would be made by the Nigerian government to holders of the notes. The quarterly payments are at attractive interest rates, and hence, the notes have a secondary market.

5. CBN notes owned by the first plaintiffs had a face value of US$7m. These notes were assigned to the second plaintiffs. Meanwhile the first plaintiffs offered their CBN notes to the defendants as security in respect of debts owing to the latter. The defendants sold the CBN notes on 19 March 2001 at 32% of the face value (the act of conversion). The plaintiffs sued, contending that the defendants had no right to dispose of the security because by that time the plaintiffs' liability to them had been discharged. The trial judge found in favour of the plaintiffs.

6. Mr Tan's main argument before me was that the date for ascertaining damages was the date of conversion and not the date of judgment, relying on *McGregor On Damages*, 16th Ed, page 912. It is clearly acknowledged in this authoritative text that the market value should be ascertained as at the time of the conversion. Various authorities were cited as leaning one way or the other. *Mercer v Jones* (1825) 1 C&P 625; and *Sachs v Miklos* [1948] 2 KB 23 in favour of a discretion to assess the market value at the date of judgment. Mr Sandrasegara referred me to the passage in *Halsbury's Laws of England* 618 as follows:-

> "**Time by reference to which value of goods assessed**. Where damages in conversion fall to be awarded according to the value of the goods converted, the time by reference

> to which that value is to be assessed is that time which is most appropriate to do justice between the parties and to compensate the claimant for the loss sustained. The abolition of the tort of detinue does not inhibit the court from granting in conversion a measure of damages traditionally granted in detinue, namely the value of the goods at the date of judgment, rather than their value at the date of conversion. The court's ability to award damages according to value at the date of judgment may either increase or reduce the sum awarded, accordingly to whether the market has risen or fallen since the conversion."

7. Mr Sandrasegara also relied on *IBL Ltd v Coussens* [1991] 2 AER 133. The principle which he wished me to consider and apply is set out in the head note as follows:-

> "Damages awarded under s 3 of the 1977 Act for conversion as an alternative to the return of the goods were not to be arbitrarily assessed as at either the date of the conversion or the date of judgment but ought to be such as fairly compensated the owner for the loss of the goods, taking into account such matters as to whether the owner would have kept the goods if they had not been converted, if not, when he would have sold or replaced them, if they were kept, whether they had increased in value, and whether the owner had suffered damage for loss of use."

He submitted that the cost of the CBN notes had risen from 32% as at the date of conversion, to 35% as at the date of judgment. He thus argued that the latter should therefore be the measure of damages.

8. The *Coussens* case was decided under the English Tort (Interference With Goods) Act, 1977. The Act did not, as Neill LJ, observed, give any guidance as to the date at which the goods is to be assessed. Hence, the Court of Appeal there reverted to the general principles at Common Law. Neill LJ concurred with the following passage from the judgment of Brandon LJ in *Brandeis Goldsmidt & Co v Western Transport Ltd* [1981] QB 864, 870:

> "Damages in tort are awarded by way of monetary compensation for loss or losses which a plaintiff has actually sustained, and the measure of damages awarded on this basis may vary infinitely according to the individual circumstances of any particular case." [1991] 2 AER 133, 139.

9. The basic premise, therefore, is to compensate the plaintiff as best as possible for the loss or damage he suffers by reason of the conversion. The loss or damage ought, therefore, as far as possible to determine as at the date of the conversion because that would be the fairest and most accurate measure. Thus, the courts in England and the Court of Appeal here have applied the corollary principle that the plaintiff is obliged to purchase his damaged goods in the market if there is a market. As Karthigesu JA held in *The Endurance* [1991] 1 SLR 661, 663:-

> "Where there is a market the charterers are expected to diminish the damage by going into the market and buying the water-makers in the market, so as to put themselves in the position they would have been if they had not suffered any wrong at all. If there is no market for the goods converted, the measure of damages would be the cost of replacement and the charterers must go to their suppliers to purchase the water-makers so as to put themselves in the same position as they would have been if not for the conversion. There was no evidence before the judge that there was no market for the water-makers."

10. The last line of the above passage clearly underlined the point that the burden of proving the absence of showing that there was no market was on the plaintiff, and, that the plaintiff had to act quickly to diminish his loss. In the present case, the evidence appears to be to the contrary, namely, that there was a market. The only reason, it appears, that the plaintiffs did not go to the market, was that, as Mr Sandrasegara submitted, they wanted to recover the CBN notes from the defendants. But, if there was a ready market, the plaintiffs ought to purchase their notes from the market and sue for the difference in price if any.

11. I am in full agreement with judicial statements in cases such as *IBL Ltd v Coussens* espousing the view that the courts should retain the flexibility of assessing damages at the date of judgment. But that flexibility must be exercised as an exception to the rule; to provide relief in circumstances where the normal rule proves deficient. For example, if the plaintiff is able to show that he had made reasonable efforts to purchase from the market but, owing to unforeseen circumstances, was unable to buy within a reasonable time from the date of conversion. There is no evidence in the present appeal before me that the normal rule (that damages for conversion be assessed as at the date of conversion) should not apply.

12. For the reasons above, the appeal is allowed. The plaintiffs' damages should be assessed as at the date of conversion at the rate of 32% of the face value of the notes; that being the known transacted price for the said notes on that day. The plaintiffs would also be entitled to such quarterly payments but only as may be due at the date of the conversion.

13. The appellants' appeal against the order to pay the costs of Mr Horne was dismissed. In my view, the evidence of Mr Horne was necessary for the assessment. The main appeal before me was essentially on a very narrow issue, namely whether damages ought to be assessed as at the date of conversion or the date of judgment. An offer was also made to have the evidence of Mr Horne agreed but that was not accepted by the appellants.

14. Finally, I upheld the award of costs by the assistant registrar below, fixed at $10,000, in favour of the respondents for the assessment of damages. The costs of the appeal before me was fixed at $5,000 in favour of the appellant for the main appeal; $500 in favour of the respondent in respect of the costs of appeal against the award of costs for the attendance of Mr Horne at the assessment.

Sgd:

Choo Han Teck

Judicial Commissioner