Seah Ting Soon trading as Sing Meng Co Wooden Cases Factory v Indonesian Tractors Co Pte Ltd
[2001] SGCA 2

Case Number : CA 40/2000

Decision Date : 09 January 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; L P Thean JA

Counsel Name(s) : Davinder Singh SC and Ajay Advani (Drew & Napier) for the appellant; Alvin Yeo Khim Hai SC and Kamachi Amparasan (William Chai & Rama) for the respondents.

Parties : Seah Ting Soon trading as Sing Meng Co Wooden Cases Factory — Indonesian Tractors Co Pte Ltd

Bailment – Bailees – Duties – Whether bailee duty bound to take reasonable care of bailor's goods – Whether burden on bailee to prove duty of care discharged – Whether bailee liable if cause of fire accidental but spread of fire due to negligence – s 63 Insurance Act (Cap 142)

Civil Procedure – Appeals – Findings of fact by trial judge – When appellate court can overturn findings of fact by trial judge

Tort – Negligence – Fire – Whether reasonable care taken to prevent cause of fire – Whether reasonable care taken to prevent spread of fire

(delivering the grounds of judgment of the court): This was an appeal against the decision of Goh Joon Seng J (the judge) allowing the respondents` (the plaintiffs`) claim for damages on account of the loss of their goods by a fire at the appellant`s warehouse where it was stored. We heard the appeal and dismissed it and now give our reasons.

The background

The appellant was the owner and operator of a warehouse at No 5 Defu Avenue 2, Industrial Park, Singapore 539516 (`the warehouse`). Pursuant to an oral contractual arrangement between the appellant and the respondents, goods in the nature of spare parts for trucks and tractors of the respondents were stored in the warehouse. Goods of third parties were also stored there. On 4 June 1996, at around 3am, a fire broke out at the warehouse, which completely destroyed it and the goods stored therein.

The Singapore Civil Defence Force (`SCDF`) received a call on the fire at about 3.29am that day. The fire also substantially damaged a neighbouring premises, No 1 Defu Avenue 2 (`the adjoining premises`). The adjoining premises were separated from the warehouse by a boundary fence, which was a steel sheet wall of about ten feet in height (`the boundary fence`).

At the material time, nine of the appellant`s employees were living in the warehouse. Of these, three were Chinese nationals and they resided in the living quarters of the warehouse. The caretaker of the warehouse, Madam Ram Murthi Devi (`Mdm Ram`) and her daughter, Mrs Khantar Devi (`Mrs Khantar`) resided in the guard`s quarters together with Mrs Khantar`s two children. Four Malaysian workers resided directly above the guard`s quarters. Two sketches showing the layout of the warehouse and the adjoining premises are at Annexes A and B.

The respondents claimed against the appellant for the losses on the following alternative bases:

(a) breach of the contract of storage; and/or

(b) breach of bailment; and/or

(c) negligence.

The question of the quantum of the loss was not an issue in the appeal.

At the trial, one of the main issues which confronted the court was as to the location where the fire first originated. On this, the judge found, on the evidence, that it probably started in the kitchen, which was located inside the office block in the warehouse (the judge mistakenly thought the kitchen was outside the office block). He also found that the fire occurred because of the negligence of the appellant.

Five witnesses were called by the plaintiff-respondents, but for our present purposes we need only refer to two: namely, a forensic expert, Mr Andrew Robbins (`Mr Robbins`) and a Civil Defence Force officer, Major Christopher Tan (`Major Tan`). For the defence, five persons gave evidence. Of the appellant`s employees, only Mdm Ram testified. The others were unwilling to return to Singapore to give evidence or could not be traced. Mrs Khantar also testified. The remaining three witnesses were the insurance company`s forensic expert, Mr Barry Ian Dillon (`Mr Dillon`), the loss adjuster, Mr Chan Hwee Seng (`Mr Chan`) and the appellant himself.

Evidence for the defence

It will be convenient if we first deal with the evidence of Mdm Ram and Mrs Khantar as they were at the warehouse when the fire broke out. Mdm Ram told the court in her affidavit of evidence-in-chief that on that eventful morning, 4 June 1996, at about 2am, she woke up to go to the toilet. On the way back from the toilet, she played with her dogs for some 10-15 minutes before returning to her quarters to sleep. Everything then was normal. About ten minutes later, while still lying awake in bed, she heard shouts from the outside. When she opened the door, she saw two Chinese nationals shouting and gesticulating excitedly. She could not understand what they were saying but she saw:

> *a bright glow at the far end of the premises which was the side adjoining the adjoining premises and where the Chinese nationals quarters were located and I realised that the two Chinese nationals were trying to tell us that a fire was in progress in the adjoining premises. I immediately told my daughter that a fire must be in progress in the adjoining premises even though I could not see any actual flames as the boundary fence separating the adjoining premises and the (warehouse) was quite high ... As we were leaving the (warehouse), I could now see the actual flames as the fire had burned right up to the boundary fence. The office block in the (warehouse) which was right by the boundary fence had still not caught fire, although the fire was rapidly burning right up to it.*

As regards Mrs Khantar, she confirmed what the mother said and also stated that `the glow from the fire was very bright indeed` but she `could not see any flames` within the warehouse. After her mother (Mdm Ram) and her own two children were safely out of the warehouse, Mrs Khantar went back to see how she could assist to prevent the fire from spreading. She claimed that on seeing a hose-reel at the front of the main building of the warehouse she pulled it to the boundary fence separating the warehouse and the adjoining premises. In cross-examination she modified this and said she pulled it up to the `middle of the plywood factory.`

We must, however, point out that when SCDF officers interviewed her on the same day, Mdm Ram stated, `I saw the fire burning somewhere around the left side of the premises and it was very smoky.` When the lost adjuster, Mr Chan, saw her two days later (ie 6 June 1996), she said `I also saw a bright glow at the far end of our factory.` It would be noted that she was telling of the glow within the warehouse, not the other side. In Mr Chan`s preliminary report dated 14 June 1996 he stated that Mdm Ram and Mdm Khantar were `unable to state with any degree of certainty where the fire was.` That was only two days after the fire. Yet, they came, some three years after the incident, to tell the court that the fire was at the other side of the fence!

Mr Dillon had no first-hand knowledge of the fire. He did not personally interview any of the workers who were present at the warehouse though his assistant, one Ms Ling, had interviewed five of them. However, he did inspect the warehouse premises on 12 June 1996. In her report (made jointly with Mr Dillon), Ms Ling reported that according to the five workers, the fire originated near the boundary of the warehouse and the adjoining premises. But what they said was not entirely consistent. Some thought the fire first started in the adjoining premises, while others indicated that the place where the fire first started was close to the fence, though they were unclear as to which side of the fence. Thus, based on the evidence gathered by Ms Ling, Mr Dillon was not able to say on which side of the boundary fence the fire started.

As for Mr Chan, he, like Mr Dillon, only inspected the warehouse after the fire. He also spoke to some of the appellant`s workers, but not the workers who resided in the adjoining premises. However, based on the information he had gathered, he was unable to say for certain that the fire started at the adjoining premises. In fact, in his preliminary report to Mitsui Marine & Fire Insurance, he stated that `there are no grounds for a recovery action against any third party.` If Mr Chan believed or was satisfied that the fire had started at the adjoining premises, surely he would have advised his principal to go after the owners/occupiers of the adjoining premises.

Claimants` evidence

It was not in dispute that the SCDF fire-fighters arrived at the scene of the fire about ten minutes after the call was received. Later, at about 4.30am, Major Tan arrived at the site leading a team of investigators. According to him, the warehouse was completely in flames by then, but as for the adjoining premises, he saw black smoke starting to come out from the rear, indicating that the property had just started to burn. He found most damage at the warehouse premises. A significant aspect which was highlighted by Major Tan was this. The warehouse contained a lot of plywood, and the adjoining premises, a lot of foam. It was common ground that foam would burn faster than plywood. His reasoning was, if the fire had started at the adjoining premises, then that property would have burnt more than the warehouse. But the position, as he saw, was in the reverse. However, it was suggested to Major Tan, based on the opinion of Mr Dillon, that by the time Major Tan arrived, the fire at the adjoining premises had already burnt out and that was why the fire at that point in time was more intense at the warehouse. What he saw was the tail end of the fire as far as the adjoining premises were concerned. Major Tan could not accept that assertion because he saw black smoke emanating from the rear of the adjoining premises, which to him demonstrated that the fire there had just started.

Our analysis

Notwithstanding the assertion of the appellant, the fact of the matter was that none of the

witnesses who testified actually saw where the fire started. Neither was there any evidence on how it started. The evidence of Mdm Ram and Mrs Khantar seemed very doubtful, though both claimed that the fire started from the other side of the boundary fence. Both of them were some distance away from the fence. Putting it at the highest, they thought the fire had its source at the adjoining premises. Of course, Mdm Ram was an interested witness because she was the caretaker and the fire had occurred while she was there. She even sought to lessen her responsibility by saying that she was not obliged to patrol the warehouse premises, but she only did so voluntarily, an assertion contradicted by her employer, the appellant. There were also other instances where she was shown to be unreliable as a witness, for example, she said people would only use the kitchen to make tea and yet there were cooking pots and woks there. For these and other reasons mentioned in [para] 10 above, we did not think we could place much weight on Mdm Ram`s evidence, and similarly on Mrs Khantar`s evidence.

As for Mr Dillon and Mr Chan, they also could not say with reasonable certainty where the origin of the fire was, though Mr Dillon opined that the fire started in an area straddling both sides of the boundary fence. The court below was thus left very much with only the evidence of Major Tan, who was, of course, not present when the fire broke out. However, the warehouse and part of the adjoining premises were still burning when he arrived, and based on what he saw, and taking into account the activities of the affected areas and the interviews with witnesses, including the first fire-engine crew, he came to the conclusion that the fire had started at the warehouse. This was wholly consistent with the first call received by SCDF on the fire from one Mr Lim Seong Chuan (`Mr Lim`) of Xin Fa Sheng Renovation Contractor (located within the adjoining premises) stating that there was a fire at the warehouse. In making the call, Mr Lim could not have been concerned about liability but about a fact situation. He would have only reported what he saw. There was no reason for him to give any false information.

The experts of the parties were in agreement that foam would burn faster than wood. Following from that, it was argued by the appellant that by the time of Major Tan`s arrival, the foam had already been burnt, leaving the wood to burn. To better understand the situation, it is necessary to refer to the sketches at Annexes A and B, which also showed the goods of various companies stored at the two premises. From Annex B, it would be seen that at the adjoining premises, besides the foam company (`Hua Foam Trading Co`), Xin Fa Sheng Renovation Contractor, Texwood Furniture Company and Leong Kok Contractors were also located there, with Xin Fa and Texwood being at the rear (based on the facing of the warehouse) and Leong Kok at the front. Eventually, the goods of Xin Fa and Texwood were totally destroyed by the fire, while the goods of Leong Kok only sustained minimal damage. As for the warehouse, it was completely destroyed. In the light of this pattern of damage, the views of Major Tan seemed more consistent. If the fire had started at the adjoining premises, the goods in that premises, including those of Leong Kok, would have been burnt. Instead, it was the warehouse which was completely burnt down. The fire at the warehouse probably spread to that part of the adjoining premises where foam goods belonging to Hua Foam were stored and then onto those parts occupied by Xin Fa and Texwood.

Another contention of the appellant was that the fire, having started at the adjoining premises, gutted the foam goods of Hua Foam and then died down. While the adjoining premises were burning, flames from the adjoining side escaped to the warehouse and caused all the destruction. But the fact that the warehouse and the goods therein were completely destroyed and the fact that Major Tan saw black smoke coming from the rear of the adjoining premises would contradict that contention. They showed that the adjoining side started to burn later.

In passing we would observe that Mr Dillon agreed that, from his experience, many fires start in the kitchen. He also stated in a report that it was possible that the fire could have been started by a

smouldering mosquito coil, cooking or other kitchen activities. The evidence showed that on the night before, the workers were working until 9.30pm. They could have prepared a meal in the kitchen before retiring. We should mention that there was no kitchen in the adjoining premises.

Considerable emphasis was placed on the fact that the two Chinese nationals had run all the way to the other end of the warehouse, some two hundred feet away, to tell Mdm Ram of the fire and then ran back to the quarters. The appellant argued that if the fire had started at the kitchen area, which was close to the living quarters of the Chinese nationals, the two Chinese nationals, and the third Chinese national, would have run out of the living quarters first instead of running to tell Mdm Ram of the fire. The appellant`s counsel submitted that this was entirely consistent with the fact that the fire was then occurring at the adjoining premises. But from the sketch in Annex A it would be seen that the distance between the kitchen (which was in the office block) and the living quarters and the distance between the area indicated by Mr Dillon as the source of the fire and the living quarters were really quite similar. We did not think too much should be read into this aspect.

Another very interesting discovery at the site was this. Three fire extinguishers were lying at the entrance to the kitchen. Why? One possible explanation given by Mr Dillon was that `sometimes people congregate their fire extinguishers because they do not want them stolen.` With respect, we found this explanation rather strange. Could it be that the Chinese nationals were trying to use the extinguishers to fight the fire in the kitchen without success and had to leave them there, with two of them desperately running to inform the caretaker? We did not wish to speculate further.

Finally, we ought to mention that Major Tan thought, based on the existence of accelerant at two locations of the warehouse, that the fire could have been started intentionally. The judge made no comment on that. The appellant sought thereby to argue this meant that the theory of Major Tan was rejected by the court. We did not think this inference was correct. Obviously, the judge said nothing on it because he did not think it was necessary to make such a finding. So did we.

Finding of fact

The determination of the trial judge that the fire started within the warehouse, and not at the adjoining premises, was a finding of fact. It is trite law that an appellate tribunal should not set aside such a finding, based as it is on evidence of witnesses unless the appellant satisfies the appellate tribunal that the trial judge is plainly wrong: **Clarke v Edinburgh & District Tramways Co** (Unreported) at 36 and **Peh Eng Leng v Pek Eng Leong** [1996] 2 SLR 305 at p 310. This reluctance to interfere is due to the recognition of the simple fact that the judge is in a better position to assess the veracity and credibility of witnesses in so far as oral evidence is concerned.

The appellant`s main contention was that the judge had failed to give any or adequate consideration to the evidence of Mdm Ram and Mrs Khantar. But for reasons already indicated, their evidence was not really helpful; nor was it reliable. We repeat: in their affidavits and testimonies in court, they said they saw the glow (from the fire) coming from the boundary fence. In their statements to the SCDF and Ms Ling, they could not say for sure where the fire came from; in fact, those earlier statements of Mdm Ram would suggest that the fire occurred near the boundary fence within the warehouse. Giving due consideration to what Mdm Ram and Mrs Khantar said, and in the light of all the other evidence, we were certainly unable to conclude that the finding of the judge was plainly wrong or was against the weight of the evidence. On the contrary, in the light of the information furnished by Mr Lim to the SCDF in his call to report the fire, we were inclined to think that the finding was probably correct.

Duty as bailee

Counsel for the appellant, quite correctly, conceded that the appellant was the bailee of the respondents` goods and as such, he had a duty to take reasonable care of the goods. It is settled law that where goods on bailment are lost or destroyed, the burden rests on the bailee to show, on a balance of probabilities, that he had discharged that duty of care. The judge found that the appellant had not discharged that duty. The appellant contended that the judge was wrong in making this finding.

We will now revert to what the judge found. Having determined that the fire had its genesis within the warehouse, and recognising that a bailee was not liable for accidental fire under s 63 of the Insurance Act (Cap 142) (or s 86 of the Metropolitan Fires Act 1774), the judge went on to hold that the appellant had not shown that the fire was caused by accident, and not by negligence. This was what the judge stated in his brief oral judgment -

> *... there appears to be poor housekeeping. The premises were full of combustible materials, some in close proximity to the kitchen from which ashes or embers could escape through the ventilation holes.*

The appellant claimed that he had taken the following measures to prevent any fire occurring or spreading within the warehouse:

(i) the building of the warehouse was constructed of incombustible material;

(ii) the warehouse was protected by a fire alarm system, three portable fire extinguishers and a hydraulic fire hose-reel.

The appellant said that the warehouse, which was erected in 1979, met the fire prevention requirements of the relevant authorities at the time.

It was not disputed that the warehouse was constructed of incombustible material. As regards the fire alarm system, the fact that it existed in 1979 did not mean that it existed and remained operational at the time of the fire. None of the witnesses of the appellant testified that they heard any fire alarm. That was significant. A fire-alarm system which is not operational is no better than not having one. So what were left were only these: (i) the warehouse building was built of non-combustible material; and (ii) some fire-fighting equipment: three portable fire extinguishers (which are only good to extinguish small fires and not after the fire has spread) and a hydraulic fire hose-reel.

Those could hardly be sufficient to establish that the appellant had taken all reasonable steps to prevent a fire from occurring within the warehouse, though they would be useful to prevent a fire from spreading from one part of the warehouse to another. Within the warehouse, there were kitchen facilities which were used by the workers living there. The workers also used mosquito coils. There was an open Chinese alter where lighted incense, joss-sticks and candles were placed. There was no evidence that the employees were, in any way, instructed on these things, or of the fire hazards they posed, should there be improper practices adopted by the workers in relation thereto. No training was given to the employees as regards fire safety. These aside, there was also no evidence to show that the appellant had a systematic plan for the storage of goods in the warehouse with the object of ensuring fire safety. What seemed apparent was that the appellant did not address his mind to these

things.

In the present case, there was no eye witness account on how the fire actually occurred. To show that a fire occurred accidentally (instead of through the negligence of the owner/occupier or his employees/agents) it would not be adequate to merely say that the cause of the fire was unknown. The legal burden of proof being on the bailee-appellant, he must produce sufficient evidence to persuade the court, on a balance of probabilities, that the fire arose without any negligence on his part or his employee. This, the appellant had failed to do. The rationale for the common law in imposing the burden on the bailee was eloquently explained by Sachs LJ in **British Road Services Ltd v Arthur V Crutchley & Co Ltd** [1968] 1 All ER 811 at 822 as follows:

> *The common law has always been vigilant in the interests of bailors whose goods are not returned to them by the bailee for a number of reasons; insofar as that vigilance relates to the onus of proof, one of the reasons stems from the fact that normally it is only the bailee who knows what care was being taken of the goods and another from the number of temptations to which a bailee may succumb. Those temptations may vary in each generation according to the nature of the transaction and in these days of rising costs include that of the bailee wishing to pay as little for security as he can `get away with`, and the complacency that can arise from the feeling `after all, we are insured`. The present case provides a good example of the need to scrutinise closely the claim of a bailee that he has discharged the onus of proof to which reference has been made.*

It must be borne in mind that here was a warehouse where nine persons resided and various human activities were carried out, including the use of fire for lighting kitchen stove, joss sticks and candles, etc. There was no `no smoking` sign exhibited in the warehouse. Neither was there any evidence that the employees were instructed not to smoke.

Having regard to all the foregoing, we did not see how we could reasonably say that the judge was wrong not to have been persuaded that the appellant had taken reasonable care to prevent a fire from occurring.

Insurance Act

We should at this juncture refer to s 63 of the Insurance Act (Cap 142) which provides that:

> *No action shall lie against a person in whose house or premises or on whose estate any fire accidentally began except that no contract or agreement made between landlord and tenant shall be hereby defeated or made void.*

This provision is derived from the English Fire Prevention (Metropolis) Act 1774.

Relying on the decision of Denman CJ in **Filliter v Phippard** [1847] 11 QB 347 where the word `accidentally` in the provision was interpreted to mean only `a fire produced by mere chance or incapable of being traced to any cause`, the appellant contended that the cause of the present fire was one which could not be traced. This was demonstrated by the fact that the experts of both the appellant and the respondents were not able to determine the cause of the fire. But it is important to see the views of Denman CJ in their context, where he said,

> *It is true that in strictness, the word accidental may be employed in contradistinction to wilful, and so the same fire might both begin accidentally and be the result of negligence. But it may equally mean a fire produced by mere chance, or incapable to being traced to any cause, and so would stand opposed to the negligence of either servants or masters.*

and concluded that this exemption from liability for accidental fires did not apply to fires produced by negligence.

But for the bailee to invoke this exemption he must positively establish the accidental nature of the fire: **Hyman (Sales) Ltd v Benedyk & Co Ltd** [1957] 2 Lloyd`s Rep 601 at 603-604, a decision of County Court Judge Wright, whose decision was approved by **Mackenna J in Mason v Levy Auto Parts of England Ltd** [1967] 2 QB 530, as an exception to the Fire Prevention (Metropolis) Act 1774, being a case of a bailee`s liability to his bailor. In the present case, for the reasons dealt with above, the appellant had not established that the fire was accidental and not due to negligence.

But that was not all. Even if it could be shown that the cause of the fire was not by negligence, but if it had spread as a result of negligence and caused damage, the defendant could be held liable. Here, the respondents had also based their claim on the ground that the appellant or his servants were negligent in allowing the fire to spread to that part of the warehouse where the goods of the respondents were stored. While the statutory provision conferred protection on a party who was not at fault so far as the origin of the fire was concerned, it did not protect a party who was negligent in letting the fire spread. In **Musgrove v Pandelis** [1919] 2 KB 43, the plaintiff occupied rooms over a garage and let part of the garage to the defendant who kept a car there. The defendant`s servant, who had little skill as a chauffeur, started the engine of the car and without any fault on his part the petrol in the carburettor caught fire. If he had acted like any chauffeur of reasonable competence, he could have stopped the fire by turning off the tap connecting the petrol tank with the carburettor. He did not do so and the fire spread as a result and damaged the plaintiff`s property. The defendant was held liable, for the fire which did the damage was not that which broke out in the carburettor but that which spread to the car and this second or continuing fire did not `accidentally` begin.

In the present case the judge found `poor housekeeping`. Goods were not stored with fire safety in mind. Combustible material was placed throughout the warehouse. Indeed, such material was also stored near the ventilation holes of the kitchen. This, in the view of Mr Dillon, was not a good practice; we would even say, not a safe practice. According to Major Tan, he did not notice the existence of any fire alarm system. But even if one did exist at the warehouse, it was certainly not in working order. No one heard it. Bearing in mind the sort of goods that were stored there, the employees of the appellant should have been instructed on how to combat fire, if one should occur, but there was no evidence of such instructions having been imparted to them. Lastly, the three portable fire extinguishers were found at the entrance to the kitchen. As mentioned before, Mr Dillon said one possible reason could be that they were placed together to prevent theft. If that was truly the reason, then such an arrangement undermined the very object of the provision of fire extinguishers. As we held earlier, we did not think this could be the reason. Taking all these factors into account, in our judgment, the fire spread and damaged the respondents` goods because of a lack of due care on the part of the appellant and/or his employees.

Our decision

In the premises, we dismissed the appeal with costs.

Outcome:

Appeal dismissed.