

M-Power Development Pte Ltd v Goodway Agencies (Shipping) Pte Ltd
[2003] SGHC 180

Case Number : Adm 60/2003, RA 142/2003

Decision Date : 29 August 2003

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Bazul Ashhab (T S Oon & Bazul) for the appellants/plaintiffs; Wendy Tan (Haq & Selvam) for the respondents/defendants

Parties : M-Power Development Pte Ltd — Goodway Agencies (Shipping) Pte Ltd

Civil Procedure – Judgments and orders – Default judgments – Order 13 Rule 8, Rules of Court (Revised Edition 1997) – Whether default judgment should be set aside when the issue was whether the plaintiff had sued the right party.

Admiralty and Shipping – Bills of lading – Bills of lading as document of title – Whether default judgment should be set aside – Whether plaintiff had sued the right party, viz. the party who issued the bill of lading.

1. The plaintiffs, M-Power Development Pte Ltd (“M-Power”), who obtained judgment in default of appearance against the defendants, Goodway Agencies (Shipping) Pte Ltd (“Goodway”), appealed against the decision of the Assistant Registrar, who set aside the default judgment. I dismissed the appeal and now set out the reasons for my decision.

2. The facts in this case, shorn of details, are as follows. M-Power are the indorsees or holders of a combined transport bill of lading dated 29 December 2002 issued by VT Co Ltd (“VTC”), a freight forwarder in Vietnam, with respect to a shipment of 19 containers said to contain 457.0944 metric tonnes of Vietnamese white rice. The cargo was to be shipped from Ho Chi Minh City to Port Klang, Malaysia, on board the vessel, *Konlink*.

3. The parties named in the said bill of lading are as follows:

Shipper: An Giang Tourimex Company (“An Giang”)

Consignee: To Order

Notify Party: (1) Northport Bulk Service Sdn Bhd (“Northport”)

(2) Harrison Investment Pte Ltd (“Harrison”)

Delivery Agent: Alfro Freight Forwarders (M) Sdn Bhd (“Alfro”)

4. An ocean bill of lading dated 29 December 2002 was issued by Regional Container Lines at Ho Chi Minh City with respect to the cargo of rice. In this document, VTC were named as the shippers while Alfro were named the consignees and notify party.

5. In January 2003, M-Power wanted, for their own reasons, a switch bill of lading to be issued to replace VTC’s bill of lading to reflect two changes. First, the shipper’s name was to be changed from An Giang to M-Power. Secondly, the cargo was to be described as “Vietnam white rice 25% broken”. Goodway, who issued the switch bill of lading on 10 January 2003, contended that they did so as the Singapore agents of VTC. The original bill of lading was collected by Goodway from M-Power in exchange for the new document and the only fee charged by Goodway was a documentation

fee of \$100.

6. After the new bill of lading was issued, it was discovered that the cargo in question had already been released by Alfro to Northport on 8 January 2003 without requiring the presentation of bills of lading. Northport had managed to take delivery of the cargo by presenting a letter of indemnity to Alfro. The circumstances under which the cargo was misdelivered are not clear. According to Goodway, VTC did not authorise Alfro to release the cargo against a letter of indemnity issued by Northport and were unaware of the misdelivery.

7. After having not been compensated for the misdelivery of their cargo at Port Klang, M-Power demanded that Goodway pay for the loss of the said cargo. When Goodway refused to do so, M-Power instituted the present action to recover damages from the former. The writ of summons was served on Goodway on 12 March 2003. In their writ, M-Power pleaded as follows:

4. [T]he Defendants were under a duty to the Plaintiffs as bailees and/or carriers for reward and/or under the contract of carriage ... to take reasonable care of the Cargo and to deliver the Cargo to Port Klang, Malaysia in the same good order and condition as shipped.

5. In breach of contract and/or duty, the Defendants failed to deliver the Cargo at Port Klang, Malaysia in the same good order and condition as shipped, or at all.

6. Further or alternatively, in breach of contract and/or duty, the Defendants, their servants or agents wrongfully and without authority delivered the Cargo to persons unknown to the Plaintiff, who were not the owners of the Cargo and without production of the Bill of Lading, thereby converting the Cargo.

7. By reason of the matters aforesaid, the Plaintiffs have suffered loss and/or damage in the sum of US\$81,624.00 which is the total value of the Cargo.

8. M-Power obtained judgment in default of appearance on 21 March 2003. Goodway claimed that this judgment was entered against them as a result of their ignorance. Their managing director, Mr Ng Teck Soon, explained the position as follows in paragraphs 37 and 38 of his affidavit filed on 25 April 2003.

37. A copy of the Writ of Summons in this action was left at our reception and the sender just walked off. Nobody from our office was asked to sign for it

38. When I perused the Writ of Summons, I note that the portion under "Indorsement of Service" was not filled up and also there was no signature on the second page in respect of the Assistant Registrar, Supreme Court, Singapore. Hence, I thought that it was merely a draft and it did not occur to me that we have to appoint lawyers and enter an Appearance in the action. This was my first time receiving a Writ of Summons.

9. On 16 May 2003, the Assistant Registrar set aside the default judgment. She ordered that Goodway be allowed to enter an appearance within 7 days and defend the action.

O 13 r 8 of the Rules of Court

10. Goodway's application to set aside the default judgment against them was made pursuant to O 13 r 8 of the Rules of Court, which provides as follows:

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

11. The principles which must be borne in mind when exercising the discretionary power under O 13 r 8 to set aside a default judgment have been considered by the courts on numerous occasions. In *Abdul Gaffer v Chua Kwang Yong* [1995] 1 SLR 484, 488, Chao Hick Tin J, as he then was, who delivered the judgement of the Court of Appeal, said:

We now turn to consider the principles upon which the court should exercise its discretion under O 13 r 8. They are:

- (i) it is not sufficient to show merely an arguable defence that would justify leave to defend under O 14; it must both have a real prospect of success and carry some degree of conviction; and
- (ii) if proceedings are deliberately ignored, this conduct, although not amounting to an estoppel at law, must be considered 'in justice' before exercising the court's discretion to set aside the default judgment....

12. At the start of the hearing of this appeal, counsel for M-Power made it clear that the appeal against the Assistant Registrar's decision rests solely on the assertion that Goodway's defence to his clients' claim has no real prospect of success.

13. Goodway contended that they had a valid defence to M-Power's claim as that they were not the carriers of the missing cargo of rice. They pointed out that they had merely acted as VTC's agents in relation to the issuance of the switch bill of lading. Their managing director, Mr Ng, explained the position in paragraph 5 of his affidavit filed on 16 July 2003 in the following terms:

I reiterate that the Defendants were only VT Co Ltd's agents in Singapore and merely issued the switch bill of lading as agents for VT Co Ltd. The Defendants never intended to and did not issue the switch bill of lading as carriers for the Cargo. I verily believe that the Plaintiffs were aware of this because a switch bill of lading can only be issued by or for and on behalf of the carrier who issued the original bill of lading, who is in this case VT Co Ltd and the Plaintiffs had in fact approached VT Co Ltd to issue the switch bill of lading accordingly. The Plaintiffs only contacted us because they were referred by VT Co to us as VT Co Ltd's local agents and it was easier for us to act as liaison between the Plaintiffs and VT Co. Ltd. The Defendants only issued the switch bill of lading upon VT Co Ltd's confirmation of instructions and this is clearly borne out by the contemporaneous email and fax correspondence exchanged between the Defendants and VT Co Ltd....

14. Goodway also pointed out that Afro were not their agents and they did not instruct the latter to release the cargo to Northport. They asserted that as M-Power were suing, as owners of the cargo, for breach of the contract of carriage and/or for conversion, compensation should be claimed from the carriers or the persons who had converted their goods.

15. M-Power asserted that there was nothing in Goodway's bill of lading that showed that they were acting as VTC's agents. They added that as they had a document of title to the cargo of rice, they were entitled to claim damages from Goodway for the misdelivery of their cargo of rice. It is trite law that a bill of lading is a document of title which, in the hands of the rightful owner, is a key that is intended to unlock the door to the floating or fixed warehouse in which the goods in respect of which it was issued may chance to be (*per* Bowen LJ in *Sanders v Maclean & Co* (1883) 11 QBD 327, 341). However, the question in this case is not whether or not M-Power may rely on a bill of lading

as a document of title. Instead, it is whether or not M-Power has sued the right party, namely the party who issued the bill of lading. Surely, this is a matter that must, in the circumstances of this case, be considered at a trial.

16. Taking all circumstances into account, the Assistant Registrar's decision to set aside the default judgment cannot be faulted. As such, I dismissed M-Power's appeal with costs.

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