

Techking Enterprise Ltd and Another v JFE Consolidators Pte Ltd and Another
[2005] SGHC 70

Case Number : Suit 1066/2003
Decision Date : 13 April 2005
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : S Mohan and Bernard Yee (Gurbani and Co) for the plaintiffs; N Vijay Kumar (Vijay and Co) for the second defendant
Parties : Techking Enterprise Ltd; PT Aneka Infokom Tekindo — JFE Consolidators Pte Ltd; Enterprise Bros Services Pte Ltd

Bailment – Bailees – Duties – Sub-bailee leaving bailor's goods in front of bailee's locked and closed warehouse – Sub-bailee alleging arrangement with bailee allowing it to leave goods in front of bailee's warehouse whenever warehouse closed – Goods subsequently stolen – Whether sub-bailee breaching duty to care for bailor's goods

13 April 2005

Judgment reserved.

Tan Lee Meng J:

1 The first plaintiff, Techking Enterprises Limited ("Techking"), and the second plaintiff, PT Aneka Infokom Tekindo ("PT Aneka"), sued the first defendant, JFE Consolidators Pte Ltd ("JFE"), and the second defendant, Enterprise Bros Services Pte Ltd ("EBS"), for the loss of a cargo of Toshiba personal computers. Techking and JFE settled their dispute before the trial commenced, and on the first day of the trial, PT Aneka sought and was granted leave to withdraw from the action. As such, the trial only concerned Techking's claim against EBS.

Background

2 Techking appointed JFE as a freight forwarder for its cargo of 161 sets of Toshiba personal computers and accessories ("the cargo"), which was flown from Japan to Singapore on 31 January 2003. The invoice value of the cargo, which was to be transhipped to another country, was US\$247,606.00. Without the knowledge of Techking, JFE instructed its subcontractor, EBS, to clear and deliver the cargo to its warehouse.

3 After the cargo arrived at Singapore Changi Airport on 31 January 2003, EBS collected it before dawn on 1 February 2003. The cargo was then trucked to JFE's warehouse, which was closed at the material time. Notwithstanding this, EBS's personnel unloaded the cargo and left it in front of the locked warehouse. EBS claimed that it was the agreed practice that whenever the JFE warehouse was closed in the night, goods could be left immediately outside the said warehouse, an area which is lit and under closed-circuit television ("CCTV") surveillance, and is within the free trade zone that is only accessible to authorised personnel. JFE's staff would check the goods the next morning and transfer them into the warehouse.

4 Although other cargo had in the past been left by EBS's staff outside the JFE warehouse when it was not open for business during delivery time, no major problems had been encountered by EBS or JFE. The present problem arose because JFE's warehouse was closed for several days from sometime on 31 January 2003 until the morning of 5 February 2003 because of the Chinese New Year. As a result, Techking's cargo was left unattended outside JFE's warehouse for several days. In the

early hours of 5 February 2003, some unknown persons managed to make away with 146 sets of the Toshiba personal computers. The theft was filmed by JFE's CCTV camera, but the images of the thieves were not clear because the lights which lit the area outside the warehouse had not been switched on. To date, no light has been shed on how the thieves managed to enter and leave the free trade zone, which, as has been mentioned, is only accessible to authorised personnel, and the crime remains an unsolved mystery.

5 After failing to recoup its loss, Techking sued both JFE and EBS but, as has been mentioned, the trial only concerned EBS's liability for the loss because Techking withdrew its claim against JFE.

EBS's defence

6 Techking's case against EBS was that the latter breached its duty as a sub-bailee to care for the cargo in question. In the alternative, Techking alleged that its loss was due to EBS's negligence in leaving the cargo unattended outside JFE's warehouse in the early hours of 1 February 2003. EBS asserted that it was not responsible for the loss of Techking's cargo because it had done all that it was required to do under its contract with JFE. It pointed out that it had agreed with JFE that goods that were delivered to JFE's warehouse in the early hours of the morning before the warehouse was open for business could be left just outside the warehouse. EBS claimed that as JFE knew that the cargo would be left outside its warehouse in the early hours of 1 February 2003, the latter should have ensured that someone was assigned to open the warehouse and transfer the cargo inside on the morning of 1 February 2003, even though it was the first day of the Chinese New Year. Had this been done, the cargo would not have been stolen four days later. EBS thus submitted that JFE should be the party compensating Techking for the loss in question.

7 JFE denied that it had agreed to allow EBS' staff to leave any cargo outside its premises. It also asserted that special arrangements had been made with EBS for the cargo to be stored in EBS's own warehouse over the Chinese New Year holidays. As such, its staff had no reason to believe that the cargo would be left outside its warehouse on 1 February 2003 and EBS should bear responsibility for Techking's loss.

8 EBS's director, Mr Low King Leong, admitted that a request had been made for the cargo to be stored in EBS's warehouse, but it had been made clear to JFE that EBS had no space in its warehouse to store the cargo. Counsel for EBS pointed out that as EBS was only paid at the rate of five cents per kilogram, all that it earned for the task of clearing, loading and unloading the cargo of 161 sets of personal computers was approximately \$53. He added that for this small sum, EBS could not possibly have agreed to deploy two men to clear 161 heavy boxes of computers at the airport, load them onto a lorry, unload them for storage at EBS's warehouse, load them again onto the lorry after the Chinese New Year holidays, transport them to JFE's warehouse and finally unload the cargo there. Furthermore, in view of the small amount earned, there was no reason for EBS to run the risk of being liable for hundreds of thousands of dollars if the cargo was lost while in its warehouse. EBS also pointed out that account must be taken of the fact that on 4 February 2003, one day before a large part of the cargo was stolen, its director, Mr Low Kim Hock, called JFE's manager, one Peter, to inform him that the cargo was still outside JFE's warehouse, and that JFE took no steps to safeguard the cargo despite this phone call. EBS thus asserted that having done all that was required of it under its contract with JFE, it was not liable to EBS, who should look to JFE to recoup its loss.

My decision

9 It is settled law that where goods that are on bailment have been lost or destroyed, the burden rests on the bailee to show, on a balance of probabilities, that he discharged his duty of care.

This was reiterated by the Court of Appeal in *Seah Ting Soon v Indonesian Tractors Co Pte Ltd* [2001] 1 SLR 521. Chao Hick Tin JA, who delivered the judgment of the court, endorsed the following explanation offered by Sachs LJ in *British Road Services, Ltd v Arthur V Crutchley & Co, Ltd* [1968] 1 All ER 811 at 822 for imposing the burden of proof on the bailee:

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; in so far 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".

10 That a sub-bailee, such as EBS, is generally in the same position as a bailee with respect to caring for the original bailor's cargo is not in doubt. In innumerable cases, a sub-bailee has been held liable for the loss of the bailor's goods. In *Learoyd Bros & Co v Pope & Sons (Dock Carriers), Ltd* [1966] 2 Lloyd's Rep 142 ("*Learoyd Bros*"), a haulage company that had been engaged by the plaintiffs to carry goods from Huddersfield to the London docks delegated part of its task to the defendants, whose driver left his vehicle unattended for some time. Consequently, the goods were stolen from the vehicle. The plaintiffs alleged that the defendants breached their duty as bailees and/or were negligent. Sachs J (as he then was) found against the defendants on both counts.

11 In *James Buchanan & Co Ltd v Hay's Transport Services Ltd* [1972] 2 Lloyd's Rep 535 at 543, Hinchcliffe J pointed out that even if the sub-bailment was gratuitous, the standard of care expected of the sub-bailee would still be that which a reasonable man would apply to his own goods. In this case, the plaintiffs' 721 cases of whisky were loaded onto the second defendant's trailer unit for carriage from Glasgow to the London docks. At London, the tractor needed repair and it was detached from the trailer at a fenced compound belonging to the first defendant, an associated company of the second defendant. The trailer's brakes were locked, but although there was a security guard in the compound and the tractor's driver slept just outside the compound and went into and out of the compound, the trailer and its valuable cargo were stolen on the next day. Hinchcliffe J took both defendants to task for allowing the valuable cargo to remain in the compound over the weekend, knowing that the security precautions were simply not good enough, or reckless as to whether they were good enough or not. He thus held both defendants liable for the loss, even though the sub-bailment to the first defendant was gratuitous.

12 Whatever may have been the arrangements between EBS and JFE with respect to the leaving of cargo outside JFE's warehouse and the storage of Techking's cargo during the Chinese New Year period, the issue in a case such as this, where the original bailor is suing the sub-bailee, is whether or not the sub-bailee has fulfilled its duties with respect to the sub-bailment. Apart from the fact that it is for the sub-bailee to prove that he has discharged his duties to the original bailor, it ought not be overlooked that in *Learoyd Bros* at 148, Sachs J rightly pointed out that the precise terms on which the head contractor and the subcontractor were working were of no concern to the original bailor of the goods. This must be so, or else Techking will be prejudiced by a contract to which it is not a party and in respect of which it had no knowledge until after the cargo had been lost. As for EBS, it can, of course, claim an indemnity from JFE if the latter's breach of contract has led to EBS having to indemnify Techking for the loss of the cargo.

13 In view of the aforesaid, the question to be answered is whether or not it was proper for EBS to have left the cargo unguarded outside JFE's warehouse at around 3.00am on 1 February 2003.

Techking contended that no reasonable man would have left the valuable cargo of personal computers unattended outside JFE's warehouse, and that by doing this with knowledge of the inherent risks, EBS had failed in its duty to take reasonable care of the cargo in its care. No one can seriously suggest that a sub-bailee discharges his obligations to care for the bailor's goods by leaving the goods outside an unguarded warehouse, whatever the sub-bailee's arrangements with the bailee may have been. Admittedly, the area outside JFE's warehouse is not accessible to everyone because it is in a free trade zone, is lit and is under CCTV surveillance. All the same, it is not a place that is safe enough for a reasonable person to leave a cargo of 161 computer sets without anyone guarding it.

14 When cross-examined, two of EBS's directors, Mr Low King Leong and Mr Low Kim Hock, conceded that there was a risk of the cargo being stolen if it was left unattended outside the warehouse. If there was indeed an arrangement between JFE and EBS that goods may be left outside the warehouse if it is not open for business, I have no hesitation in holding that this arrangement is in total disregard for the safety of the goods left there. JFE's liability to Techking is not an issue in this case as the claim against JFE has been withdrawn, and whether JFE is liable to EBS for the damages payable by EBS to Techking is of course relevant only if EBS institutes an action against JFE with respect to the loss of Techking's cargo of personal computers. What is clear for the purpose of Techking's claim against EBS is that the latter had failed in its duty to take proper care of the cargo.

15 It follows that EBS had failed in its duty as a sub-bailee to care for the original bailor's goods, and Techking is entitled to be compensated by EBS for the loss of the personal computers. Techking's calculation of the market value of the computers was not seriously challenged at the trial. I thus hold that Techking succeeds in its claim for damages but account must be taken of the sum received from JFE in their settlement agreement. Interest on the sum due to Techking is payable at the rate of 6% per annum as from the date of the Writ to the date of judgment. Techking is also entitled to costs.

Claim allowed.

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