Teo Chin Leong Thomson and Another v Fuji Xerox Singapore Pte Ltd [2000] SGHC 123

Case Number	: Suit 1652/1999
Decision Date	: 30 June 2000
Tribunal/Court	: High Court
Coram	: G P Selvam J
Counsel Name(s)	: Manoj Nandwani with Renganathan Shankar (Shankar, Nandwani & Partners) for the plaintiffs; Ian Chang with Desmond Ng (Jimmy Harry & Partners) for the defendants
Parties	: Teo Chin Leong Thomson; Woo Poh Choon Doreen trading as Thomson Copy Service — Fuji Xerox Singapore Pte Ltd

JUDGMENT:

Grounds of Judgment

1. This case concerns an agreement for the hire of photo-copying machines. The plaintiffs and the defendants charge the other with breach of contract. There are two plaintiffs. Mr Thomson Teo Chin Leng and Madam Doreen Woo Poh Choon. Madam Woo is the mother of Thomson Teo (the first plaintiff). The first plaintiff started a small business and called it "Thomson Copy Service". His mother became a partner in 1992. The business provided services such as photocopying, binding, lamination and printing. Their principal customers were large enterprises. They carried on their business at the material time at Block 554 Woodlands Drive. They rent the premises for their business.

2. The plaintiffs' business relationship with the defendants began in 1986. The defendants are suppliers of photocopying machines. The defendants run a fairly large business for their annual turnover in the band of millions of dollars.

3. In late 1995 the plaintiffs found that their business was doing well. At that time, the machine which did the speed-copying was a model supplied by the defendants. It was called Model 3050. It was also called a Selex copier. The plaintiffs had no problem with that machine. But they wanted to expand their business. So they decided to upgrade the machine to a state-of-the-art machine. It was a Fuji FX 5100 model. This machine was capable of printing A-4 size documents at a super speed. It also had other attractive automation features. It was described as "A wealth of features provides a wealth of opportunities". Persuaded by the defendants' salesman the plaintiffs agreed to rent the machine. In the event the plaintiffs rented three machines in 1995 under two hire or rental agreements. The agreements were for renting and not hire purchase. The three machines were :

1. XEROX 3060 PLAN PRINTER

2. A 935 COLOUR COPIER

3. XEROX 5100 COPIER

The 3060 model was covered by a single rental and a full service agreement dated 22 August 1995. There was no dispute or claim in respect of that machine. The other two machines were covered by a rental agreement and a full service dated 28 September 1995. The first plaintiff signed the agreements for the partnership constituted by the two plaintiffs. The second defendant at that time was his partner. The son reported to the Registry of Businesses on 22 September 1999 that he left the partnership on 31 October 1998. The mother therefore became the sole-proprietor. His departure, however, had no difference to the relationship between them and the defendants or the present proceedings. This was because this action concerns a contract signed by both plaintiffs while they were partners.

4. It is fitting now to refer to the relevant provisions of the rental agreement in respect of the A 935 and 5100 models : (Except otherwise stated "the agreement" means the rental agreement of 28 September 1995).

(a) The rental period was 84 months (7 years). The monthly hire payments were structured in this way : $1998 for the first 36 months, $3998 for the next 24 months and $5448 for the next 24 months. There was deferred rental of $19,751 payable at the end of the agreement. They made a total of $318,383. The rental was in respect of both machines. There was an interest clause of 15% p.a. on overdues.

(b) The agreement provided by clause 3 that "The agreement cannot be cancelled or terminated except as expressly provided herein".

(c) Clause 10 provided that the defendants "may at any time terminate this Rental Agreement and repossess the Equipment if the Customer is in breach of this Agreement".

5. Clause 12 provided as follows :

"Upon the premature termination of this agreement pursuant to clause 10 or for any other reason, the Customer shall pay FXS the total of the following amounts:

(a) all costs and expenses hereby incurred by FXS including any costs in relation to termination of this Agreement and repossession of the Equipment;

(b) the total rent due and owing at the time of such payment;

(c) total amount payable under this agreement less those paid to the date of premature termination and those due but unpaid as noted in 12(b) above; and

(d) an administration fee of $100."

6. The agreement stipulated 604 Sembawang Road #03-18, Sembawang Shopping Centre as the installation address. The plaintiffs' rented the unit for running the business. The area of the unit was a mere 365.2 square feet. That hypothetically measures 15 feet by 24 feet. Within that space the plaintiffs had five machines. The defendants undertook the responsibility of installing the new machine. This required some electrical work. In that there was a glitch and the plaintiffs became bedevilled by it. It was explained by the second plaintiff, Doreen Woo, in her evidence before me as follows :

"That place is not meant for this big machine….

We need to change some of the electrical points … before the machine cane come in to be used.

The electricity tripped in the Sembawang Shopping Centre when the electrician came to fix. It tripped even before the machine came. When the electricity tripped the landlord came to know about it because all the neighbouring shops were blacked out. During the blackout a lot of the other shops were affected. Their cash register cannot be opened. Some of them – the neighbouring shop – some of their customers were in the fitting room and there was quite a chaos. It disturbed a lot of other tenants as well. So the landlord "already told us that if this is going to happen when you bring in this machine, I will not allow".

7. The plaintiffs were unable to accept the machine into Unit 03-18 Sembawang Shopping Centre. If they returned it they would be in breach of the agreement. In the event the machine was delivered to another place at Boon Lay; it belonged to Doreen Woo's brother.

8. The plaintiffs continued to pay the monthly rent for all three machines – that is 3060, A935 and FX 5100.

9. Then they defaulted in the payment of rents. The default occurred in the middle of 1998. The default was in respect of all three machines.

10. Then in November 1999 the plaintiffs filed this action asserting that the defendants were in breach of contract. The basic allegation of breach was that the FX 5100 was not fit for the purpose which it was hired. The other breaches the plaintiffs relied on were : The defendants agreed to change the equipment if required but failed to do so. Further the defendants "guaranteed to replace any equipment if it was not fit for whatever purpose for which it was specifically hired for" but failed to do so. The plaintiffs further alleged that the electrical power requirement of FX 5100 was such that it could not be used at the Sembawang Shopping Centre and the defendants were at fault in failing to ascertain the feasibility of using the machine at that place. It was alleged that the defendants were in the wrong in prematurely recommending FX 5100 without doing a site survey first. Further it was pleaded that the defendants "failed/refused/neglected to remedy the situation for the plaintiffs and had in fact forced a delivery of the said equipment to another premise at Boon Lay".

11. Based on those assertions the plaintiffs claimed huge losses and damages.

12. The defendants denied any breach by them and asserted that the plaintiffs were in breach. They made these positive assertions : There was nothing wrong with FX 5100. It was the plaintiffs' responsibility to provide for sufficient electricity supply. The defendants agreed to change or replace the machine only if its performance was not according to the specifications. The plaintiffs actually accepted the machine because the delivery at the Boon Lay premises was at the request of the plaintiffs. The machine functioned properly at the Boon Lay premises where there was no problem relating to the electricity supply.

13. The defendants counterclaimed the following amounts as debt being outstanding rentals :

(a)	For Xerox 3060	$ 26,869.61
(b)	For FX 5100 and A Colour 935	$67,940.86
(c)	Balance of total amount on all 3 machines	$214,243.09
(d)	Maintenance fee	$ 28,274.16
(e)	Deferred rental	$ 19,751.00
	Total :	$357,078.72

14. The real issue for determination was whether the FX 5100 supplied by the defendants was not fit for the purpose it was purchased. Undoubtedly it was. There was not a thread of evidence even to indicate that it was not. In fact when it was installed at Boon Lay it performed according to the contractual specification under normal supply of electricity.

15. At the trial the plaintiffs attempted to make a big issue of the fact it was not installed at Sembawang Shopping Centre. It was said that the contractual place of installation was Sembawang Shopping Centre. It was not installed there. Therefore the defendants were in breach of contract.

16. When all the evidence came to light it became abundantly clear that the defendants were ready able and willing to install it at the Sembawang Shopping Centre. The fault lay squarely with the plaintiffs. The plaintiffs were trying to squeeze the FX 5100 into the small space they had rented and thereby alarmed their landlord. The landlord forbade them to bring the FX 5100 machine into the building. Madam Woo admitted this in her oral evidence before me. She had also made an admission to the same effect in a letter of 8 October 1998 (AB 21). It contained the following admission :

> "The reason is that we could not get permission to bring the machine into Sembawang Shopping Centre as the size and weight of the machine is not allowed by the landlord. Therefore, since the day we took delivery of the machine 3 years ago, we had to place the machine at Boon Lay (leased space from a relative's shop unit)"

17. The first plaintiff added a gloss to it. These are the extracts from his evidence before me : (NE 17, 18, 20).

> "So what happened was when the electrician came down, he installed the electricity and changed the ampere from 20 ampere to 20. Then after that, he tests and the whole row of the shop all black-out : So we are frightened, then we asked him "how, how come black-out?".
>
> So the next day, then we called Gerry. Then he said must pay $10,000 to upgrade to another type of electricity, the industrial or what, I am not sure what it is. So we are shocked, $10,000.
>
> Mr Gerry told us that must change and pay another $10,000 to change electricity. … So $10,000; I don't think I can come out one shot $10,000. Before this the FX 5100 was already at Boon Lay for two months."

18. The evidence of both plaintiffs sealed the fate of their case. It was not a breach of contract by the defendants. It was the plaintiffs who were unable to receive it at Sembawang Shopping Centre and asked for it to be delivered at Boon Lay. They, thus, attempted to take advantage of their own wrong all their allegations against the defendants were a flight of fancy.

19. Accordingly, I decided against the plaintiffs and decided in favour of the defendants and gave judgment on their counterclaim in the sum of $223,506.92.

20. The amount awarded to the defendants require an explanation. The plaintiffs did not effectively submit on the defendants' quantum. However, I felt that the claim for full rental for the entire period may not be reasonable. This was particularly so in respect of the FX 5100. The defendants in the end decided to reduce by half their claim for undue rental and deferred rental. That in my view was fair and reasonable. The new quantum added up to $223,506.92. This was the amount for which I gave judgment on the counterclaim. Costs followed the event.

GP Selvam

Judge