

Cosmos Shipping Co Ltd v Manson Shipping (Singapore) Pte Ltd
[2001] SGHC 176

Case Number : Suit 190/2000/K
Decision Date : 06 July 2001
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Goh Kok Leng with Dennis Tan (Ang & Partners) for the plaintiffs; Anthony Lim with Toh Wee Jin (Anthony & Wee Jin) for the defendants
Parties : Cosmos Shipping Co Ltd — Manson Shipping (Singapore) Pte Ltd

JUDGMENT:

- 1.The plaintiffs, Cosmos Shipping Co Ltd, are a Korean Corporation. Their core business is ship-management.
- 2.On 30 June 1999 the plaintiffs entered into a ship management agreement (the "management agreement") with a Hong Kong company called Best Luck Shipping Ltd ("Best Luck"). By the management agreement Best Luck retained the plaintiffs to manage the ship "CRYSTAL" of the Port of Belize. The ship was a chemical tanker.
- 3.Under the management agreement the plaintiffs were required to attend to "the matters of the vessel/manning, all kind of vessel supplies including bunkers, marine insurance, claims for seamen and vessel, marine research and consultation, supervision for the vessel repair and new building, service of incoming and outgoing vessel etc."
- 4.The management agreement contained elaborate provisions about manning, maintenance and repairs, survey inspection, bunkering, shores and inventories (in Korean port only) and insurance.
- 5.The management agreement further provided that the Best Luck (the owner) shall pay the manager (the plaintiff) US\$2,500 per vessel per month. The duration of the management was infinite over a minimum calendar year from the commence date.
- 6.On 1 July 1999, the plaintiffs entered into another agreement also with Best Luck Shipping Ltd. This agreement was called the Ship Management Agreement for Crew Manning (the "crew manning agreement"). One Capt. Hsiao Tong Long signed the agreements for Best Luck Shipping Ltd.
- 7.On 19 February 2000 the name of the ship was changed to "SEA LEADER B". The ownership of the vessel also changed. The new owners were Sea Leader Shipping Co Ltd with an address in Belize. It was not clear if Sea Leader was incorporated in Belize. The ship retained the Belize registration.
- 8.The change of name and ownership of the ship was effected by the plaintiffs. So they knew all about the changes. And they remained the managers and continued to act as usual notwithstanding the changes.
- 9.From the documents placed before the Court it appeared that the plaintiffs discharged their functions as managers from July 1999. They paid the crew and supplied goods and materials to the ship. The plaintiffs clearly considered Best Luck as the party liable to pay them for the simple reason that Best Luck was the owner of the ship and Best Luck signed the agreements with them. The plaintiffs presented a document called "CRYSTAL WAGE SCALE" bearing the name "BEST LUCK SHIPPING". The plaintiffs rendered a statement dated 28 July 1999 for US\$43,266.58 to Best Luck

Shipping Ltd (vessel : "CRYSTAL"). There was another statement of account dated 6 September 1996 for US\$53,816.77 also Best Luck Shipping Ltd (vessel: "SEA LEADER B" ex "CRYSTAL").

10. Then there was a change in rendering statements from October 1999. A statement of account dated 8 October 1999 for US\$44,078.26 was issued to Manson Marine Pte Ltd, Name of Vessel : Sea Leader and Sea Pirncess B.

11. On 3 November 1999 another statement was issued to Manson Marine Pte Ltd for a balance of US\$49,097.02. This statement gave credit for US\$43,293.64 "Received from You to US on 16th Oct 99". The "You" was Manson Marine Pte Ltd.

12. Thereafter for the months December 1999 to April 2000 statements were rendered to Manson Marine Pte Ltd. The statements rendered in December 1999, January, February and March 2000 gave credit to Manson Marine Pte Ltd for substantial amounts received from "You", (that is Manson Marine Pte Ltd). The biggest item in each statement was crew wages for the "SEA LEADER B" under the crew manning agreement and scale of charges submitted to Best Luck Shipping.

13. Why the statements were sent to Manson Marine Pte Ltd and not the owners of the ship was not made clear. It, however, appeared that Manson Marine Pte Ltd was a medium between the plaintiffs and the owners. The moving spirit of Manson Marine was Capt. Hsiao In that sense Manson Marine Pte Ltd was another manager or agent of the owners of the ship.

14. Then a fax was sent on 29 December 1999 from Manson Shipping (S) Pte Ltd (the defendants) to the plaintiffs by Capt. Hsiao. It read as follows :

TO: Cosmos Shipping Co Ltd
ATN: All Department
FM: Manson Shipping (S) Pte Ltd
Capt Hsiao/Sonny Wee

DATE: 29 Dec 1999

Re renewed Co name and move new office

Dear Sirs

Good day, our company "MANSON MARINE PTE LTD" had change name to "MANSON SHIPPING (S) PTE LTD". With effect from 25th November 1999, we have move to the following new office.

Address: 3 Shenton Way, #20-09 Shenton House, Singapore 068805
Telephone: (65) 2229888
Fax No: (65) 2200983
E-mail: mansonshipping@pacific.neg.sg
Telex: MSNSIP rs 20179

Kindly update your records accordingly and send all correspondence to the above new address.

Best Regards
Capt. Hsiao/Sonny Wee

15. From then on Manson Shipping's name was used to deal with third parties in respect of the "SEA LEADER B". This was done mainly by Captain Hsiao or Sunny Wee. The plaintiffs rendered debit notes to Manson Shipping but the statements of accounts were rendered to Manson Marine Pte Ltd as usual. One of the payments was made by Manson Shipping Pte Ltd.

16. In February or March 2000 something happened to the ship "SEA LEADER B". The plaintiffs in a letter dated April 22, 2000 addressed to Manson Shipping (S) Pte Ltd explained what happened.

TO: Manson Shipping (S) Pte Ltd

DATE: April 22, 2000

ATTN: Capt. Hsiao/Managing Director
Sonny Wee/Operations Manager

SUBJECT: M.T. "Sea Leader B"

As you did accept acknowledge very well, above-mentioned vessel was arrested by U.S. Navy and sold by auction on the date of April 15th, 2000 because of loading illegal cargo. By the way, crews have been staying on board by waiting ship-owner's instruction. And also this company, Cosmos Shipping Co Ltd have been requested your company to repatriate all crew many times. Nevertheless, ship-owner, Manson Shipping Co Ltd never worked out count measure for crew repatriation since vessel to be arrested by U.S. Navy till now.

And so, this company of Cosmos Shipping Co Ltd had requested with courtesy for your good company to repatriate all crew immediately. That is why Captioned vessel was already sold and maintained by new buyer, and so previous Korean Crew and Myanmar Crew could not be on board further and had to be repatriated.

And so we request strongly once again that your company repatriate all crews within today, and inform us your action to be done or not. If you don't take action till today, in the meanwhile you don't inform us, we will arrange local agent to repatriate all crews tomorrow at once.

And then we will claim expenses of crews' repatriation and others additionally to last claim of US\$193,574.44 via our lawyer in Singapore accordingly. That is why your company is under an obligation to repatriate all crews as ship-owner.

17. So the vessel was arrested and sold at Dubai, United Arab Emirates for illegal activities. At Dubai the plaintiffs attempted to recover their charges from the proceeds of the sale of the ship that is to say from the owners. That was a clear indication that the plaintiffs considered that the party legally liable to them was the shipowner. They failed to recover anything.

18. So they cast about and brought these proceedings against Manson Shipping Pte Ltd, the defendants. This action was brought on 20 April 2000. The statement of claim read as follows :

1. The plaintiffs' claim against the defendants is for US\$193,574.44 being the price of goods and materials supplied at the request of the defendants, their servants or agents, full particulars of which have been rendered to the

defendants and short particulars of which are contained in the plaintiffs' statement of account for February to April 2000 annexed hereto.

2. Despite the plaintiffs' various requests, the defendants have failed, refused and/or neglected to pay the said sum of US\$193,574.44 or any part thereof.

And the plaintiffs claim :

- (i) The sum of US\$193,574.44 or alternatively damages;
- (ii) Interest; and
- (iii) Costs.

19. The statement of account annexed to the statement of claim is annexed to this judgment. It is to be noted that it was addressed to Manson Marine Pte Ltd and not Manson Shipping (S) Pte Ltd. Furthermore the statement of claim refers to "the price of goods and materials supplied at the request of the defendants". The goods and materials supplied according to the statement of account consisted of 4 out of 11 items. The bulk of the items was in respect of crew wages amounting to more than US\$160,000. Payment to the crew was not part of the statement of claim.

20. During the trial, it emerged from the evidence of the plaintiff's witness that the crew related items and the management items all emanated from and founded on the crew manning agreement and the scale of charges submitted to Best Luck Shipping. The defendants had nothing to do with them. The defendants were not the owners of the ship nor were they the contracting parties. Additionally there were no requests for the payment of the crew wages and supply of goods from the defendants. They were all governed by the manning and management agreement between the plaintiffs and Best Luck Shipping. At all times they dealt with Capt. Hsiao.

21. The defendants filed a defence stating that (a) they never made any request for the goods and services from the plaintiffs; (b) they never entered into any contracts with the plaintiffs; (c) the request emanated from Best Luck Shipping Ltd through its Managing Director, Captain Hsiao Tong Long; (d) Captain Hsiao was not an employee, agent or servants of the defendants; (e) They never represented Capt Hsiao as their employee, agent or servant; (f) they were not the owner of the ship "SEA LEADER B"; (g) they made some payments, it was for the account of Best Luck.

22. The plaintiffs filed a reply to the defence. They said that the defendants conducted themselves as principals. They further relied on the payment made by the defendants. They said that the statements of accounts were "for all intents and purposes for the account of the defendants". They also relied on the letter about the change of name of Manson Shipping Pte Ltd to Manson Shipping (S) Pte Ltd.

23. At the trial the plaintiff's witness said that all requests came from "Capt Hsiao". That made sense because that would be the usual and natural conduct since he was the mind behind the owners. Some natural person had to speak for Best Luck Shipping or the actual owners of the ship. In the circumstances of this case the requests made by Capt Hsiao can be attributed to the owners of the ship only. The use of the communication facilities of a non-contracting, non-owner party who derives no benefit from the transaction at all, cannot ordinarily make that party a contracting party or liable on a contract with another party. This is particularly so because there was an elaborate written contract with the owners of a ship.

24. In this case the plaintiffs were aware of the particulars of the owners and in fact entered into detailed contracts with them. The plaintiffs witness said that the defendants were part of a group of

companies. He knew that because the plaintiffs handled the change of ownership.

25. There was uncontradicted evidence that Manson Shipping was never the owner of the ship in question. It was also untrue that Manson Shipping (Singapore) Ltd was a new name for Manson Marine Pte Ltd. Capt Hsiao falsely and deceitfully made that statement. Additionally, neither Capt. Hsiao nor Sunny Wee was an employee, office holder or shareholder of Manson Shipping (S) Pte Ltd.

26. The defendants have always been a separate legal entity. It was Capt Hsiao who misrepresented to the plaintiffs about the change of name.

27. The true reason why the plaintiffs sued the defendants is because they have an asset in Singapore. That asset is #20-09 Shenton House. It was bought by a Taiwanese couple in the name of Manson Shipping to acquire permanent residence in Singapore. They entered into a some form of "joint-venture" with Capt Hsiao. That was the purpose of Manson Marine Pte Ltd. Manson Shipping (S) Pte Ltd was an agency company. A letter written on 3 November 1999 to the Controller of Immigration signed by Sonny Wee mentioned that Manson shipping (S) Pte Ltd was "agents". Best Luck and Manson Marine Ltd had no assets. The plaintiffs contention that the defendants were liable because they were part of the same group has no legal basis. A group of companies is not a legal entity. In any event a member of a "group" of companies is not liable for the debts of other members of the "group". That is a legal fundamental.

28. It was argued for the plaintiffs that an agent may in law be personally liable if he personally contracts. That in deed is the law. It has the support of very high authority, namely the Privy Council : see **Stanley Yeung Kai Yung v Hong Kong and Shanghai Banking Corporation** [1981] AC 787. It is illustrated by **The Swan** [1968] 1 Lloyd's LR 5. The latter case is an important authority. It laid down a principle on the intention of contracting parties. Brandon J said at p 12 :

Where A contracts with B on behalf of a disclosed principal C, the question whether both A and C are liable on the contract or only C depends on the intention of the parties. That intention is to be gathered from (1) the nature of the contract, (2) its terms and (3) the surrounding circumstances: see Bowstead on Agency, (12th ed.) (1959), at pp. 257 and 258, par. 113, and the authorities there cited. The intention for which the Court looks is not the subjective intention of A or of B. Their subjective intentions may differ. The intention for which the Court looks is an objective intention of both parties, based on what two reasonable businessmen making a contract of that nature, in those terms and in those surrounding circumstances, must be taken to have intended.

Where a contract is wholly in writing, the intention depends on the true construction, having regard to the nature of the contract and the surrounding circumstances, of the document or documents in which the contract is contained. Where, as in the present case, the contract is partly oral and partly in writing, the intention depends on the true effect, having regard again to the nature of the contract and the surrounding circumstances, of the oral and written terms taken together.

29. The principles stated above do not help the present plaintiffs. In this case there was no objective evidence at all that the plaintiffs transacted or interacted with the defendants in relation to the payments to the crew and the supply of goods. All the evidence before the Court pointed to, and pointed only to, the plaintiffs contracting with Best Luck Shipping or the owners of the ship. On an objective assessment of all the evidence the plaintiffs' intention was to contract with the owners.

30.Next, the plaintiffs relied on the principle of past course of dealings. They relied on **Maritime Stores Ltd v H. P. Marshall & Co Ltd** [1963] 1 Lloyds LR 602. Neither the case nor the principle state in it helps the present plaintiffs. All the evidence before the Court pointed to there being no past course of dealings between the plaintiffs and the defendants. There was an express and elaborate contract between the plaintiffs and Best Luck Shipping. There was also a course of dealings as evidenced by the statements of account with Manson Marine but not Manson Shipping.

31.After all the evidence was given, the plaintiffs sought to amend the statement of claim to include the payments to the crew. I disallowed it because all the evidence had already been given and it did not support the proposed amendment. It was fundamentally out of tune with the oral and documentary evidence which had already been adduced. The proposed amendment served no useful purpose.

32.In the result, the plaintiffs' claim is dismissed with costs.

Sgd:

G P SELVAM
JUDGE

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