

Abani Trading Pte Ltd v P T Delta Karina Mandiri and Another
[2001] SGHC 310

Case Number : Suit 587/2000
Decision Date : 12 October 2001
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Ajaib Haridass (Haridass Ho & Partners) and Bhagwandas Mahtani (Harpal, Mahtani Partnership) for the plaintiffs; Chan Eng Thai (Jan Tan & Chan) for the second defendants
Parties : Abani Trading Pte Ltd — P T Delta Karina Mandiri; Anor

Judgment

1. This case arises out of a complaint of inducement and procurement of a breach of contract and conversion of goods. The contract was a voyage charterparty between the plaintiff Abani Trading Pte Ltd ("Abani") and the first defendant PT Delta Karina Mandiri ("Delta"). The goods were a part shipment of cement. The party alleged to have induced the breach and converted the goods was the second defendant Poh Fang Pte Ltd ("Poh Fang").

2. Although Abani named Delta and Poh Fang as defendants in the action, it proceeded only against Poh Fang at the trial as Delta was not served.

The plaintiff's case

3. Abani is a Singapore company engaged in trading. It purchased from Indo Energy Pte Ltd ("Indo Energy") under a contract dated 16 June 2000 5000 metric tons Tonasa brand cement and 6000 metric tons Indo Bull brand cement on FOB terms, loading port Makassar, South Sulawesi. Both brands of cement are produced by PT Semen Tonasa in Indonesia. The quantities were subsequently increased to 13,000 metric tons comprising 7000 metric tons Tonasa brand cement and 6000 metric tons Indo Bull brand cement.

4. Abani was not only sourcing the cement from Indo Energy. Its director Ajaykumar Mahendra made enquiries with Poh Fang about Tonasa brand cement in the first week of June, but they could not agree on a price.

5. Ajaykumar's evidence was that throughout June and July, Wong Poh Seng ("Wong"), a director of Poh Fang continued to try to secure a sale. When Ajaykumar informed him that Abani had obtained the cement it needed, Wong was unhappy. Wong persuaded him to change his mind, and warned him that things in Indonesia can go wrong easily. On 14 July, Wong told him that Abani could not import Tonasa brand cement into Madagascar which was not purchased from Poh Fang because Poh Fang was the sole agent for PT Semen Tonasa. Ajaykumar mentioned Wong's disapproval in a fax of 14 July to Madagascar, where the cement was intended to be shipped to under a contract of sale dated 19 June with a purchaser named Tranombarotra Mpangalana.

6. Abani also entered into negotiations with Delta to secure a vessel, the Jordan II, for that purpose. A voyage charterparty dated 14 June was executed between the parties to carry 11,000 metric tons of cement from Makassar to Madagascar, subsequently increased to 13,000 metric tons.

7. Abani received a Notice of Readiness dated 14 July issued under the charterparty that the Jordan II was ready to load its cargo. The notice was issued by Delta's agent in Singapore, Shoreline Shipcare Services ("Shoreline"), on behalf of Delta.

8. On 14 July Delta sought Abani's assistance to pay US\$145,875 due to the head owners of the Jordan II for hire and ballast. Abani agreed to pay US\$126,825 and made payment on the same day. Abani also agreed to pay another US\$110,000 on 20 July if 50% of its cargo was loaded by that day.

9. Loading of Abani's cement then proceeded on the Jordan II. Shoreline reported to Abani on 19 July 2000 that 2543 metric tons were loaded, with 10,457 metric tons to follow.

10. The transactions then ran into difficulties. On 21 July Shoreline wrote to Abani to demand payment of US\$110,000. At the same time the US\$126,825 that Abani had paid on behalf of Delta on 14 July was credited back into Abani's bank account. The credit notice stated the details of credit as "Refund of freight deposit and booking cancellation of m.v. Jordan II". Delta did not make the payment from its own funds. The US\$126,825 was provided by Poh Fang.

11. Delta was somewhat ambivalent about the cancellation. On 22 July, the day after the refund of the US\$126,825 it requested Abani to pay freight under the charterparty, implying that the charterparty was subsisting. It was only on 23 July that Delta informed Abani that the charterparty was cancelled for non-payment.

12. Poh Fang became more involved in the matters at this juncture. It wrote to the master of the Jordan II, PT Semen Tonasa, Delta, and the "receiver in Madagascar" on 23 July (the day Delta issued the notice of cancellation) that it was the charterer of the vessel and that no other party was involved in the transaction. At the same time it confirmed its acceptance of 2682 metric tons of Tonasa brand cement and 83,341 bags of Indo Bull brand cement already loaded on board the Jordan II.

13. PT Semen Tonasa reacted by informing Abani on 24 July that it was stopping loading onto the Jordan II until Abani obtained another vessel.

14. Shoreline was drawn further into the dispute at this stage. On 24 July it wrote as the agent of Delta to Indo Energy and Poh Fang asserting that the charterparty between Delta and Abani was still in force, and stating that Delta cannot unilaterally cancel the charterparty. Shoreline's communication was consistent with Abani's assertion that the secured payment of US\$110,000 was conditional to the loading of half of Abani's cargo. There was no record or report of the state of loading achieved on 20 July, or that the condition was satisfied. However, Delta maintained its position and declared that the cancellation of the charterparty was final.

15. Shoreline was also in communication with Poh Fang. Peter Abesayna (who is also known as Chriss Peter) the shipbroker at Shoreline who dealt with the charterparty spoke to Vonny Poemomo, another director of Poh Fang. He asked about Poh Fang's involvement with the charterparty of the Jordan II, and she explained that Poh Fang wanted to shut Abani and Indo Energy from the Madagascar market and was prepared to do anything to ensure that.

16. Without a vessel, Abani's venture to ship the cement to Madagascar came to an end.

The defence

17. Poh Fang's defence was that it had made its own arrangements to purchase cement from PT Semen Tonasa for sale to Madagascar. It entered into an agreement with PT Semen Tonasa on 7 July. To ship the cement, it entered into a charterparty with Delta for the Jordan II on 12 July. It did not know that the Jordan II was also chartered to Abani until 19 July, when it helped Delta to make the US\$126,825 refund to Abani. When Wong became aware of Abani's charterparty on 19 July, and he knew that the double booking of a vessel was illegal.

18. The witnesses for Poh Fang had difficulty reconciling the documentary evidence with its defence that it had purchased the cement on 7 July and chartered the Jordan II on 12 July.

19. The first document Poh Fang relied on was its letter of 21 July informing that PT Semen Tonasa

We are now successfully obtaining the chartering of the vessel, MV Jordan II after our initial advance payment of freight

, which has been paid as follows:

- USD126,825 (T/T to PT Delta Karina Mandiri)
- USD80,000 (T/T to Jordan Shipping)
- USD10,000 (T/T to PT Delta Karina Mandiri via your bank account)

Since we are now the charterer, we will accept whatever jumbo bags packing cement loaded on board (Quantity for not more than 5,000 MT) and remaining balance of 50 kg on board in order to fill up to vessel maximum quantity, it must be the packing of 50 kg bag (2 ply kraft paper plus 1 ply woven laminated) "Macoma" brand. Kindly immediately prepare the above packing with our brand the soonest.

The L/C for the above, will be issued by BNP Singapore sometimes next week and appreciate your Sales Contract for our preparation. (Emphasis added)

20. Another document that Poh Fang relied on is a letter from PT Semen Tonasa dated 27 July and faxed to it on 29 July. The letter which bore the caption "L/C of MV Jordan II and Draft Contract of Cement" stated

Considering that vessel loads 13,000 MT of cement for Madagascar to be changed to Poh Fang, therefore please be opened the L/C ASAP, because the vessel will finish loading today and the vessel will be arrested by us if the L/C can not be issued by you today.

Herewith we are sending you the above contract and please be returned after you sign. (Emphasis added)

21. That letter indicated that five pages were faxed. The other four pages were two copies of a two-page sale contract dated 7 July signed by PT Semen Tonasa but not Poh Fang. On the face of the letter, the draft contracts were forwarded to Poh Fang to be signed and returned.

22. Poh Fang also produced a signed copy of the agreement. It was the same agreement as the one forwarded by PT Semen Tonasa on 29 July, except that Poh Fang's chop and the signature of Vonny Poernomo were added.

23. It was evident from these documents that Poh Fang's assertion that "The 2nd Defendants entered into a written agreement with PT Semen Tonasa for the purchase of 13,000 MT of ordinary Portland cement on 7 July 2000" in its answer to interrogatories was not true.

24. Counsel for Abani sought Wong's explanation for Poh Fang's request for the sale contract in its letter of 21 July if there was already an agreement on 7 July. His reply was that it really wanted an invoice, not a contract. The explanation was clearly inconsistent with the clear terms of the letter. Furthermore, if Poh Fang wanted an invoice, there was no evidence that it corrected its request, and no invoice from PT Semen Tonasa was produced in evidence.

25. Under further questioning, Wong's answers became more difficult to follow. He said that Poh Fang did not sign the contract sent on 29 July because it had signed it on 7 July, then he went on to say he could not remember how the agreement was signed on 7 July. Abani's counsel asked for the signed agreement of 7 July to be produced, but was told that Poh Fang did not have it.

26. Poh Fang's assertion just could not stand. It is clear that there was no sales agreement on 21 July and the contract was only forwarded to Poh Fang for signature on 29 July with the letter dated 27 July. I find on the evidence that there was no agreement between Poh Fang and PT Semen Tonasa for the purchase of cement on 7 July.

27. Serious questions were raised over Poh Fang's claim that it secured the charterparty on the Jordan II on 12 July. Poh Fang had stated in its letter of 21 July that it had secured the charterparty after making the initial advance payment of freight. That payment was made on 21 July.

28. Counsel for Abani drew attention to the fact that the parties' contemporaneous conduct was not consistent with Poh Fang being the charterer on 12 July. Under the terms of the charterparty, a Notice of Readiness ("NOR") should be issued to the charterer when the vessel is ready to load. Such a notice was issued on 14 July by Shoreline to Abani but not Poh Fang. Delta also informed Abani on its own of the Jordan II's readiness to load. This was only consistent with Abani being the charterer of the vessel. When Wong was asked why no NOR was sent to Poh Fang, no explanation was offered beyond stating that Delta did not send it.

29. Poh Fang's position was not tenable. Shoreline issued the NOR as Delta's agents and Delta repeated the notice in its letter of 14 July. This was clear evidence that Delta recognised Abani as the charterer of the Jordan II on 14 July, and did not regard Poh Fang as the charterer. In addition to that, Poh Fang admitted in its letter of 21 July that it secured the charterparty after making the advance freight payment and that was on 21 July. There is no basis for its claim that it secured the charterparty on 12 July.

Evaluation of the evidence

30. As I have stated, I reject Poh Fang's assertions that it contracted to buy cement from PT Semen Tonasa on 7 July and secured the charterparty on 12 July. In making these assertions, Poh Fang was not mistaken, but was lying in the face of events and documents in its knowledge and possession.

31. On the other hand, I accept Ajaykumar's evidence that Wong was unhappy when Abani did not buy the cement from Poh Fang. His evidence was consistent and was supported by the fax of 14 July.

32. I also accept Peter Abesayna's evidence of Vonny Poernomo's determination to keep Abani and Indo Energy out of Madagascar market. That was consistent with her fellow director Wong's attitude.

There was also evidence that she was involved in the termination of Abani's charterparty. When Abani's solicitors wrote to Delta to demand to reinstate the charterparty with Abani she prepared a draft reply for Delta.

33. There is clear evidence that Poh Fang and Delta were acting together when Delta terminated Abani's charterparty. Poh Fang was upset that Abani was purchasing the cement from Indo Energy directly and selling it to Madagascar. It provided the funds for Delta to refund the advance freight payment made by Abani, agreed to take over the vessel although no NOR had been issued to it, and also accepted Abani's Tonasa brand and Indo Bull brand cement on the Jordan II although it had not purchased Indo Bull brand cement from PT Semen Tonasa before or after this occasion.

Inducement and procurement of breach

34. Does the evidence support the allegation that Poh Fang had induced and procured Delta's breach of the charterparty? *Halsbury's Laws of England* Vol.45(2) 4th Edn, Reissue states at para 687

Where one person by either direct or indirect means intentionally induces a second person to commit a breach of contract against a third person or prevents or hinders the performance of that contract, so that that third person suffers damage, the first commits a wrong actionable at the suit of the third, unless the inducement is justifiable.

35. The Court of Appeal expanded on this in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 3 SLR 405. It held that

16. ... To knowingly procure or induce a third party to break his contract to the damage of the other contracting party without reasonable justification or excuse forms the basis of the tort of inducing a breach of contract.

17. An act of inducement per se is not by itself actionable. The plaintiff must satisfy a two-fold requirement in order to found a sustainable cause of action: First, he must show that the procurer acted with the requisite knowledge of the existence of the contract (although knowledge of the precise terms is not necessary); and second, that the procurer intended to interfere with its performance. ...

36. There was no direct evidence that Poh Fang induced Delta to cancel the charterparty, but the inquiry does not stop here. Direct evidence cannot and need not be shown in every case. Where one party sets out to subvert another's contract, it may not leave direct evidence of its actions. In such a situation, the target should not be without remedy. All the relevant facts should be considered, and where appropriate, inducement can be inferred.

37. In this case the facts showed that Poh Fang and Abani were potential competitors in the Madagascar cement market, and Poh Fang was unhappy over Abani's intention to export cement there. Poh Fang was also involved in the termination of the charterparty by supplying the money for the refund and by taking over the charterparty as well as the loaded cement.

38. Poh Fang gave cause to question its motives when it falsified the dates of the purchase agreement and charterparty. If those were regular transactions, there was no need to antedate them. They were antedated to conceal Poh Fang's intervention when Abani's contracts were still in

force.

39. Looking at all the evidence, I find that Poh Fang's inducement of Delta's breach of the charterparty was established on a balance of probabilities and that the two further requirements referred to by the Court of Appeal were also satisfied.

Conversion

40. *Halsbury's Laws of Singapore* states at Vol.18 para 240.605 that

To constitute conversion there must be positive wrongful act of dealing with the goods in a manner inconsistent with the owner's rights, and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. This inconsistency is the gist of the action. There need not be any knowledge on the part of the person sued that the goods belong to someone else; nor need there be any positive intention to challenge the true owner's rights.

41. Poh Fang knew that Abani had chartered the *Jordan II* and commenced loading when the charterparty was cancelled, and it took over the cement together with the vessel.

42. The cement was loaded pursuant to a sale to Abani on FOB terms. Under these terms, a seller has discharged their duties when the goods sold are loaded onto the vessel, and the risk passed to the buyer. This is reinforced by s 32(1) of the Sales of Goods Act which provides that

Where, in pursuance of contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer.

43. The cement was delivered to Abani when it was loaded on the *Jordan II*, and Poh Fang converted the cement when it took over the cement on 23 July.

Damages

44. Abani quantified its damages arising from Poh Fang's inducement and procurement of the breach of the charterparty at US\$261,560.00. This was computed on the price that it would have received from its purchaser Tranombarotra Mpangalana in Madagascar, for 13,000 metric tons of cement, after deducting the purchase price of the same cement from PT Semen Tonasa and the freight charges under the charterparty.

45. The proper damages are not to be arrived that way. Abani must show that the loss it incurred was unavoidable – see *McGregor on Damages* 17th Edn paras 295-7. When the *Jordan II* was not available, it could have continued with the sale by securing another vessel to carry the cement if that was possible. There was no evidence of its efforts after 23 July to carry on with the sale. Secondly, there is confusion over the quantity of cement sold to Madagascar. The sale contract was for 11,000 metric tons. There was a request from the purchaser to increase the order by 2000 metric tons, but no evidence of a response from Abani. Then Abani produced its invoice to the purchaser for 15,000 metric tons. Furthermore counsel for Poh Fang made a valid point that Abani should disclose the communications between itself and the purchaser leading to the agreement of 19 June, and after the

sale was aborted. Such disclosures which can throw light upon the matter should be made.

46. On the damages for conversion, Abani did not specify the quantity of cement alleged to be converted by Poh Fang in its statement of claim. In its closing submissions, reference was made to the 2,682 metric tons and 83,341 bags referred to in Poh Fang's letter of 23 July.

47. Counsel quantified damages at US\$166,171.50 computed on the cost price under the agreement with Indo Energy of 16 June. Reliance was placed on *The Jag Shakti* [1986] AC 337 where the Privy Council ruled that where a shipowner converted cargo by delivering it without the production of letters of credit, the damages payable was the full market value of the cargo at the time and place of conversion. While that is now settled law, it does not support the computation. The agreement of 16 June showed the contract price of cement on that day. It was not evidence of the market price prevailing on 23 July when the conversion took place.

48. For the reasons mentioned, I am unable to determine the proper damages on the evidence before me, and I order damages be assessed by the Registrar.

49. Abani having succeeded in its claims should be awarded costs. However, it will not be full costs because Abani had proceeded on another cause of action, conspiracy with Delta, which it abandoned at the commencement of the trial. Abani is to receive two-thirds of the costs of the action.

Sgd:

Kan Ting Chiu
Judge