

Jurong Town Corp v Shutters 31 Pte Ltd
[2002] SGHC 175

Case Number : OS 227/2002, SIC 2288/2002
Decision Date : 08 August 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Constance Tay (Ramdas & Wong) for the plaintiffs; Chia Boon Teck (Chia Yeo Partnership) for AmerFab Pte Ltd
Parties : Jurong Town Corp — Shutters 31 Pte Ltd

Landlord and Tenant – Distress for rent – Seizure of defendants' property under writ of distress – Whether defendants have reputed ownership of property as at date of seizure – Whether seizure of property rightful

Judgment

GROUNDS OF DECISION

1. This was an application by AmerFab Pte Ltd ("AmerFab") claiming that it is the owner of a Strippit machine that was seized by the sheriff under a writ of distress taken out by the plaintiff, Jurong Town Corporation ("JTC") on 4 March 2002 against their tenant Shutters 31 Pte Ltd in respect of arrears in rent amounting to \$387,099.13. The Strippit was allegedly purchased by AmerFab for \$82,400. An auction was held on 9 July 2002 from which about \$77,000 was recovered. By order of this court, the Strippit was not put on auction pending determination of AmerFab's claim. AmerFab subsequently filed an affidavit through Ong Hei Lai that enclosed photographs of the Strippit. On two sides of the Strippit were pasted a large notice stating "Property Of AmerFab Pte Ltd. Tel 96315915". The photographs were taken on 23 July 2002 by Ong Hei Lai . From the photographs, it appears that the premises were deserted and the only item seen in it was the Strippit. Mr. Ong Hei Lai was accompanied by his solicitor when he went to take the photograph on 23 July. Miss Tay, counsel for JTC disputes the assertion that the notices had been pasted on the machine at the time when the Writ of Distress was executed.

2. This factual dispute is the important foundation for the claimant's legal submissions. It is so important that if found in the claimant's favour, Miss Tay would concede that I must release the Strippit. The legal point itself is not complicated. It rests on the Court of Appeal decision in *Plaza Singapura (Pte) Ltd v Cosdel (S) Pte Ltd* [1990] SLR 93. Counsel before me conceded that on the authority of the *Cosdel* case, the plaintiff would only be allowed to seize the Strippit if the debtor had reputed ownership of it. On the facts, Mr. Chia, counsel for AmerFab, submitted that there could be no reputed ownership simply because of the notice that was pasted on the machine stating expressly that the machine was the property of AmerFab. The Court of Appeal in the *Cosdel* case made it clear that the burden of proof lay on the claimant, in this case, AmerFab to show that they were the rightful owner, and this would implicitly require it to show evidence that there was no basis to conclude that the tenant had reputed ownership.

3. Miss Tay for JTC adduced two affidavits on behalf of the JTC. They were the affidavits of Ong Keong Soon and Muhamad Yusri, both of whom were executive officers of JTC. They deposed that they accompanied the Sheriff on 4 March 2002 to affix the Sheriff's seal. They affirmed that the notice in question was not seen on the Strippit. They also affirm that they did not see the said notice on 9 July, the day of the auction. Their evidence was that the notice was so large and prominent that if they were there their presence could not have been missed. Mr. Ong Keong soon also

commented that the notices were in too pristine a condition to have been pasted after Chinese New Year as Ong Hei Lai had deposed in his affidavit. It was not disputed that Chinese New Year this year fell on 12 February. But Mr. Ong Hei Lai did not specify the exact date after Chinese New Year when the notices were pasted. In the course of submissions, Mr. Chia said that he had been instructed that his client would be able to find at least ten witnesses who will say that they saw the notices on the Strippit on the day of the auction. I agreed with Miss Tay that even if I had allowed Mr. Chia's application to adduce further affidavits from these persons, the evidence would be immaterial because the only relevant date would be 4 March 2002 when the Sheriff affixed his seal on the Strippit. In this regard, I then directed that the Sheriff to depose as to what he saw or did not see on that day.

4. Miss Tay also brought to my attention that this same Strippit was previously claimed by Visas Industries Pte Ltd on 18 May 2002. That application was dismissed by Belinda Ang JC on 8 June 2002. This was soon followed by AmerFab's application before me on 8 July 2002. If that was the case, it must follow that AmerFab's notice was not placed on the machine prior to 18 May 2002. It must have been placed long after the Chinese New Year. Mr. Chia submitted that his client does not know why Mr. Ho made a claim for the Strippit on behalf of Visas, which as counsel conceded, was a sister company to Shutters 31 of which Mr. Ho was also a director. It is obvious that Mr. Ho must know that the Strippit had already been sold to AmerFab. Mr. Ho went out of his way to produce a hire purchase agreement to show that Visas had purchased the Strippit machine (identifying it by its registration number). The present claim was made after Visas's claim before Belinda Ang JC had failed, and only a few days before the scheduled auction. The claim by Visas was that the machine belonged to them but had been left at the defendant's (Shutters 31) premises for storage. This was the same reason presently put up by AmerFab. From the record, and the documents put in by AmerFab showing that it had bought the machine from Shutters 31 in July 2001, it appears that AmerFab paid \$82,400 for a machine but left it to idle at the vendor's premises for a year. Mr. Chia submitted that AmerFab was looking for a buyer for the machine but was not successful. Considering that a specific bank loan was taken out for \$82,400 at compound interest rates, it is, in my view, most unlikely that no firmer action was taken to cut loss. I am not at all convinced by the invoice and receipt issued by Shutters 31 to AmerFab. In any event, the question is whether, the defendant Shutters 31 had reputed ownership at the date of the execution of the writ of distress. In this regard, Mr. Chow Chee Wai the Bailiff filed an affidavit to the effect that he did not see the said AmerFab notice on the Strippit when he placed the Sheriff's seal on it, and further, that he would not have missed it had it been there. I am satisfied with his evidence. The said notice was too large and too prominent for anyone to have overlooked it.

5. On the evidence before me, I am not persuaded that the notices were placed on the Strippit at the time the Writ of Distress was executed, and there is nothing to convince me that the tenant had reputed ownership of the machine. AmerFab's claim was therefore dismissed.

Sgd:

Choo Han Teck

Judicial Commissioner

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