



(ii)	Payment made to secure the release of the cargo	US\$37,596.75	= S\$63,162.54
(iii)	Additional storage charges	US\$16,710.93	= S\$28,074.36
(iv)	Overtime charges to discharge the cargo	US\$142.59	= S\$239.55

#### *The dispute over measurement*

10. The defendants claimed that the plaintiffs misrepresented the total volume of the cranes to be about 1400 cubic metres, and that the volume was stated as 1700 cubic metres in the contract to give the plaintiffs a margin of safety.

11. When they made their own measurement before loading on 4 August they found the total volume to be approximately 3077 cubic metres.

12. The defendants also relied on the report of a survey carried out by surveyors appointed by the consignee in Manila, which showed the volume as 3,323.23 cubic metres. The plaintiffs denied that they were guilty of misrepresentation, and contended that freight was agreed on a lumpsum basis.

#### The dispute over the disclosure of the consignee and the lease

13. The plaintiffs asserted that they had informed the defendants that the cranes were being leased to Singapino Corporation. The defendants, on the other hand, alleged that they were not informed of the lease or the identity of the consignee before the commencement of the legal proceedings.

14. The documents exhibited by the plaintiffs contradicted the defendants' denial of knowledge of the consignee. The bill of lading for the shipment named Singapino Corporation as the consignee and a letter from the plaintiffs to the defendants dated 19 August specifically referred to Singapino Corporation as the consignee.

#### *The plaintiffs' claims*

15. The plaintiffs asserted that they had paid the consignee the sums in items (ii), (iii) and (iv) in paragraph 9 and that they were in the process of making payment of the sum under item (i). They also added a further item for \$3,258.78 which they claimed they had incurred on their own as administrative, travelling and accommodation expenses arising out of the delayed release of the cranes.

16. They claimed against the defendants (i) a declaration that they were entitled to be indemnified by the defendants against their liability to the consignee, (ii) an indemnity in the sum of \$301,476.43 (the full amount claimed by the consignee), (iii) damages in the sum of \$3,258.78, or alternatively damages to be assessed, (iv) interest and (v) costs.

#### The Assistant Registrar's decision

17. The plaintiffs applied for summary judgment on their action. This came on for hearing before an Assistant Registrar. After hearing counsel the Assistant Registrar gave judgment to the plaintiffs in terms of prayers (i) to (v) of the plaintiffs' claims without specifying whether the damages were fixed at \$3,258.78 or were to be assessed.

18. The defendants appealed against the whole of the Assistant Registrar's judgment.

*The issues raised before me*

19. In the appeal counsel for the defendants submitted that

Defendants' case is that (i) *Plaintiffs misrepresented the volume of cargo* to the Defendants prior to the execution of the contract, and that relying on the volume as represented by Plaintiffs, Defendants informed the carrier/shipowner of that volume. Upon discharge, (ii) *the carrier* discovered that the true volume was much greater than that told to them and *exercised a lien on the cargo*. (iii) *The Plaintiffs were also late in their payment of freight*. (Emphasis and numbering added)

Examination of the issues raised

20. There were three issues raised – misrepresentation, lien and late payment of freight.

21. On the issue of misrepresentation, the defendants claim to have discovered the misrepresentation before the cranes were loaded. They did not rescind the contract, and continued with it. In these circumstances, even if there was a misrepresentation, the contract continued to subsist and the defendants were bound by their covenant to discharge the cranes to the consignee.

22. On the lien issue, the shipowner had exercised its lien because no freight payments were made to them. The defendants had misstated that the lien was exercised for non-payment of the excess freight payable on the excess volume. The defendants' reliance on the lien was unfounded because it was their duty to pay freight to the shipowner. While the lien resulted in their inability to release the cranes to the consignee, it did not displace their obligation to release the cranes or excuse the non-compliance.

23. On the late payment of freight, while it was not disputed that the plaintiffs were late when they tendered the freight payment to the defendants, the defendants loaded and shipped the cranes and accepted the late payment. In these circumstances, the late payment did not justify their failure to release the cranes.

My decision

24. The defences raised did not excuse the defendants from their obligation to deliver the cargo to the consignee, and the plaintiffs are entitled to redress.

25. The plaintiffs are entitled to the indemnity they sought. What they can recover under the indemnity, however, must be proved. Similarly, while the plaintiffs are entitled to recover damages for losses incurred by them, the losses must be proved. I therefore varied the Assistant Registrar's orders so that the amount recoverable under the indemnity and the damages recoverable are to be assessed, and I also made it clear that the orders shall not prevent the defendants from taking out a separate action against the plaintiffs on the alleged misrepresentation on the measurement of the cargo, or for additional freight.

Kan Ting Chiu

Judge

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