The "Endurance 1" ex "Tokai Maru"
[2000] SGHC 99

Case Number : Adm in Rem 7/1996

Decision Date : 31 May 2000

Tribunal/Court : High Court

Coram : G P Selvam J

Counsel Name(s) : Loo Dip Seng (Ang & Partners) for the plaintiffs; Vinod Kumar Dube (Dube & Co) for the defendants

Parties : —

Bailment – Bailees – Duties – Breach of duty – Principles of law of bailment – Goods subject to bailment and sub-bailment – Conversion of goods by sub-bailee – Both bailor and sub-bailor have cause of action against sub-bailee for conversion – Successful claim against sub-bailee prevents further recovery by other bailor

Tort – Conversion – Conversion of cargo on board – Cargo subject to charterparty and law of bailment – Plaintiffs issuing invoices for value of cargo converted – Effect of invoice on plaintiff's claim

: ***The claim***

This is a claim for conversion of a parcel of marine gas oil (MGO) which was in the tanks of a tanker ship called `Tokai Maru`. There is an additional claim for conversion of bunkering equipment and provisions. The claimants, Kohap (Hong Kong) Ltd, were sub-time-charterers of the tanker. The defendants were the owners of the tanker. There is an alternate claim for breach of duty based on bailment.

The ship purchases

The principal players of this case are two businessmen: Albert Lim Liang Chai and Johnny Tay Siong Siew. Their business was shipowning and ship-operation. To get a full factual matrix it is necessary to travel back in time a little.

On 22 November 1991 three tankers were sold by companies controlled by Albert Lim to companies controlled by Johnny Tay. The particulars are as follows:

The ship	:	The Sea Sources:
The Sellers	:	Sea Sources Trading Pte Ltd
The Buyers	:	Cotan Petroleum Pte Ltd
The Price		S$600,000 - S$300,000 to be paid immediately. The balance was payable in 36 monthly instalments of S$8,333.33 commencing on 22.11.91 and ending on 21.11.94.
The ship	:	The Sea Endeavour:
The Sellers	:	Hozun Oil Trading Pte Ltd
The Buyers	:	Cotan Investments (S) Pte Ltd

The Price	:	S$700,000 - $300,000 to be paid immediately. The balance was payable in 36 monthly instalments of S$11,111.11 each. The first was payable on 22.11.91 and the last on 21.11.94.
The ship	:	The Sea Enterprise
The Sellers	:	Seawell Petroleum Pte Ltd.
The Buyers	:	Cotan Energy and Trading Pte Ltd
The Price	:	S$550,000 - S$300,000 to be paid forthwith. The rest was payable 36 monthly instalments of S$6,944.44 commencing on 22.11.91 and ending on 21.11.94.

Johnny Tay`s companies will be collectively called `the Cotan companies`.

Johnny Tay and Madam Yap Hong Luan [commat] Ernie Surjati Djapri (`Ernie Yap`) were the directors of the Cotan companies which purchased the three vessels. As such they signed a guarantee for the outstanding amount in respect of each purchase.

The main charterparty

The defendants, Sea Sources Trading Pte Ltd, the owners of the Tokai Maru at the relevant time were a Singapore company. By a time charterparty dated 2 February 1994 they chartered out the ship to Cotan Petroleum Pte Ltd. It was for a period of one year with an option for another year. The time-charter was in the standard form of SHELLTIME-4 with additional clauses.

Clause 13 provided, inter alia, that `The master (though appointed by the Owners) shall be under the orders and direction of the vessel, agency and arrangements and shall sign bills of lading as charterers or their agents may direct`.

Clause 18 and 46 of the main charterparty permitted sub-letting of the ship.

Clause 48 provided, inter alia, that `the vessel is to be delivered in a suitable condition for loading of the charterer`s intended cargo and to be redelivered in the condition as delivery`.

Clause 49 provided that `The cargo is to be discharged into fishing vessels in the open Pacific and Indian Ocean and Arafura Sea and other acceptable area according to and charterers` instructions to the Master of the vessel during the voyage.`

Clause 57 provided that `The owner will agree to provide 16 crews members, ie including four Korean-Chinese crews subject to availability`.

The sub-time-charter

Cotan Petroleum Pte Ltd as charters/owners let, that is to say sub-let the tanker to `Kohap (Hong Kong) Limited or nominees`. The sub-time-charter charterparty was also in SHELLTIME-4 form. In the result, the main charterparty and the sub-charterparty contained several common clauses.

The charterers did not reveal the particulars of the sub-charter or the sub-charterparty - nor even their name to the owners. This was normal because charterers as a rule would not want the owners to know the rate of hire of the sub-charter. Further, if the owners got to know the sub-charterers there is a risk of the owner and sub-charterer by-passing the charterer in future business.

Withdrawal of the vessel

The tanker was delivered to the time-charterers and, therefore, in turn to the sub-charterers on 17 March 1994. The tanker operated mainly in international waters. While the tanker was on charter service, the charterers paid to the owners the hire for the first month but failed to pay hire for the second month. On account of this the owners withdrew the tanker from charter - that is to say they brought the charter to an end alleging breach by charterers.

At the time of the withdrawal there remained on board the `Tokai Maru` a cargo of marine gas oil (MGO) and equipment which had been placed on board the tanker pursuant to terms of the sub-charter and the charter. They were:

(a) marine gas oil (MGO)

(b) refrigerator oil

(c) bunkering equipment

(d) provisions

(e) two water makers

The agents of the sub-charterers Wonjin International asked the charterer to arrange for the transfer of the MGO and equipment. This did not materialise. (More will be said about this later). The sub-charterers` personnel, however, left the tanker.

Indebtedness of Cotan Companies and set-off

At this time the Cotan companies were indebted to Albert Lim`s companies fully $500,000. It had been outstanding for some time. The debt was in respect of the tankers purchased by the Cotan companies from Albert Lim companies as stated in [para] 3. It is to be remembered that Johnny Tay and Ernie Yap by reason of the personal guarantees were jointly and severally liable to Albert Lim companies for the debts.

In these circumstances, Albert Lim, on behalf of the owners arranged for the sale of the MGO on board the `Tokai Maru`. At the time of the withdrawal the amount of bunkers on board was 905.39 m.t. From this he deducted 39.612 mt as this was the quantity of bunkers on board at the time of delivery. The quantity sold was therefore 865.778 m.t. He further arranged for the proceeds of the sale of the MGO $212,433.53 to be set-off against the moneys due to Hozun Oil in respect of the sale of the `Sea Endeavour`.

In late May 1994 the name of `Tokai Maru` and its ownership were changed. The new name was `Endurance 1`. Following this the tanker was chartered out. There was a mention that the new charter rate was US$3,500 per day.

Wonjin claims against Cotan

The next significant events were a fax on 10 May 1994 and two faxes on 16 May 1994 from Wonjin International to Cotan Petroleum on asking for the transfer of the MGO and other things and holding the latter liable for the MGO and other things that remained on board the `Tokai Maru` Then on 10 June 1994 Wonjin International issued three invoices to Cotan Petroleum. They were in respect the MGO, the refrigerator oil, the bunkering equipment and provisions on board the `Tokai Maru`. The invoices gave the bank account particulars to which Cotan Petroleum was required to remit the value. Cotan Petroleum never remitted the money.

Nothing significant happened for more than a year. Johnny Tay and the Cotan companies had paid nothing to Wonjin International or Albert Lim`s companies. He also had other creditors chasing him, that is the Cotan companies.

Seawell sues Johnny Tay

In these circumstances, Seawell Petroleum Pte Ltd on 22 June 1995 issued a writ against Johnny Tay and Ernie Yap claiming S$138,888.96 - Suit 1060/95. This was based on the guarantee signed by them on the debt of Cotan Energy &Trading (S) Pte Ltd on account of the purchase of the `Sea Enterprise`. An application for summary judgment was taken out - Johnny Tay filed an affidavit to resist the indefensible claim. This was what he said on the affirmation of his affidavit. [All italics supplied by me].

> *On 31 March 1995, the sellers rendered to the buyers a statement of account showing that S$541,755.68 was still owing from the sellers to the buyers under the said agreements as at 31 March 1995. There is now produced and shown to me in a bundle marked TSS-3, a copy of the buyers statement of account dated 31 March 1995 and invoices attached thereto. The defendants dispute the statement of account alleging that S$541,755.68 was due to the buyers in respect of the sale of the 3 vessels. The defendants will contend that the correct amount remaining unpaid to the sellers in respect of the sale of the 3 vessels to the buyers was S$527,777.62, which is the aggregate sum of 20 monthly instalments of S$26,388.88 each. Within the said statement of account itself, the buyers had given to the sellers credit a sum of S$212,433.53. The said sum of S$212,433.53 was allegedly the proceeds of sale of 865.748 mt of marine gas oil (hereinafter `MGO`) which was laden on board the mt Tokai Maru which was then owned by Sea Sources and chartered to Cotan Petroleum. The sale of the MGO took place between 15 May 1994 and 19 May 1994. The defendants will contend that the true value of the MGO at the time of the sale was US$175 per metric ton. The quantity of MGO remaining on board the mt Tokai Maru at all material times was 1064 k/l which was about 906.500 mt. The value of 906.500 mt of MGO which remained on board the mt Tokai Maru was therefore US$158,637.50, equivalent to S$244,777.62 at the then prevailing exchange rate of S$1.543 to US$1.00. There is now produced and shown to me in a bundle marked TSS-4 a copy each of the following:*
>
> *(a) Time charterparty dated 2.2.94 and made between Sea Sources and Cotan*

Petroleum.

(b) Tokai Maru Report AFTER DISCHARGING dated 30.4.95.

(c) Telerate Bunker Fuel Service printout for 16.5.95.

On or about 14 May 1994, Sea Sources withdrew the mt Tokai Maru from charter to Cotan Petroleum. The defendants will contend that the withdrawal was wrongful and in breach of contract. ***At the time of the withdrawal of the vessel, there were on board the Tokai Maru goods and materials which were the property of Cotan Petroleum****:*

(a) ***2 water makers***

(b) ***bunkering equipment***

(c) ***provisions on board***

(d) ***refrigerator oil***

The said goods and materials were never returned to Cotan Petroleum after the Tokai Maru was withdrawn from charter to Cotan Petroleum*. I am advised by the defendants` solicitors and I verily believe that in the circumstances., Sea Sources had wrongfully converted to their own use the said goods and materials. The value of the property listed in items (a) to (d) above are as follows:*

(a) S$47,800.00

(b) US$93,768.50

(c) US$12,269.00

(d) US$534.00

There is now produced and shown to me in a bundle marked TSS-5 a copy of each of the following:

(i) Watermac Engineering Pte Ltd`s Invoice No 5921 for S$15,000.00

(ii) Aqua-tech Engineering & Supplies Pte Ltd`s Invoice No 5061/A for S$32,800.00

(iii) ***Invoice No TK-02 from Wonjin International Co Ltd to Cotan Petroleum for bunkering equipment for US$93,768.50***

(iv) ***Invoice No TK-03 from Wonjin International Co Ltd to Cotan Petroleum for provisions for US$12,269.00***

On the basis of the sellers` statement of account dated 31 March 1995 TSS-3, the sellers should have given credit to Cotan Energy for 26.32% of the sum of S$212,433.53. 26.32% of S$212,433.53 is S$55,915.13. If the value of the MGO was S$212,433.53, the amount owing by Cotan Energy to the plaintiffs should be reduced by S$55,915.13. The defendants, however, contend that the true value of the MGO was S$244,777.62. 26.32% of S$244,777.62 is S$64,425.46. The amount owing by Cotan Energy to the plaintiffs should therefore be reduced by S$64,425.46.

Further, the defendants will contend that the plaintiffs should also give credit to Cotan Energy for 26.32% of the value of the goods and materials referred to in para 7 above. The value of the said goods and materials converted to Singapore currency at the date of the withdrawal of the Tokai Maru is about S$212,239.05. The defendants will contend that the sellers had wrongfully converted the said goods and materials to their own use towards payment of the monies which were owing from the sellers to the buyers in respect of the sale of the 3 vessels. In the circumstances, the defendants will contend that Cotan Energy was entitled to be credit a sum representing 26.32% of S$212,239.05 ie S$55,861.32. The amount owing by Cotan Energy to the plaintiffs should therefore be further reduced by S$55,861.32.

It is to be remembered that credit has already been given for S$212,433.53 to reduce the indebtedness of Cotan Investments to Hozun Oil. In the event, on 18 October 1995 summary judgment was given for the full amount of $138,888.96. More than that, it is to be noted that Cotan Petroleum asserted as the owner of the goods and material on board the `Tokai Maru` and that the owner had converted Cotan Petroleum`s goods. Invoices issued by Wonjin International was the basis of that assertion. There was no suggestion that Johnny Tay had asked the defendants to deliver the goods to the plaintiffs or Wonjin. The next day, 19 October 1995, Cotan Petroleum issued a writ against the `Endurance 1` ex `Tokai Maru` claiming damages for breach of contract, alternatively for wrongful withdrawal of the `Tokai Maru` and conversion of two water makers. The other goods and materials were omitted.

The action

The writ in this action was filed on 5 January 1996 against the owners of `Tokai Maru`. The indorsement of claim read as follows:

The plaintiffs claim against the defendants as bailees or sub-bailees of the plaintiffs` goods, which were on board the ship or vessel `Tokai Maru` now known as `Endurance 1`, damages for conversion of the said goods on or about 14 May 1994.

The relevant segment of the statement of claim read as follows:

On or about 24 April 1994, Sea Sources withdrew the vessel from the Head Charterparty with Cotan.	

On or about 10 May 1994, Sea Sources were given notice by Cotan that the plaintiffs wished to transfer the plaintiffs` goods which were on board the vessel to another vessel.		
On or about 14 May 1994, upon the instructions of the plaintiffs, the mt `Ionian Light` attempted to take re-delivery of the plaintiffs` goods from the vessel.		
Sea Sources, however, by their servants or agents on board the vessel, refused to re-deliver the plaintiffs` goods to the mt `Ionian Light` but sailed away and made off with the plaintiffs` goods		
Particulars		
The plaintiffs` goods which were on board the `Tokai Maru` on 14 May 1994 comprised:		
(a)	1,064.021 kilolitres (905.39 mt) of MGO;	
(b)	Provisions as appears in the list attached hereto marked `Annex C`;	
(c)	Bunkering and other equipment as appears in the list attached hereto marked `Annex B`.	
In the premises, Sea Sources have refused to return the plaintiffs` goods and/or have sold or otherwise disposed of the plaintiffs` goods. Sea Sources have thereby converted the plaintiffs` goods to their own use.		
Particulars		
(a)	On 15 May 1994, Sea Sources sold or permitted their nominees, Hozun, to sell 343.233 mt of MGO to Sentek Marine & Trading Pte Ltd (`Sentek`).	
(b)	On 16 May 1994, Sea Sources sold or permitted Hozen to sell 318.644 mt of MGO to Sentek.	

(c)	On 19 May 1994, Sea Sources sold or permitted Hozun to sell 203.871 mt of MGO to Sentek.	
Alternatively, Sea Sources have in breach of their duty as bailees failed to deliver the plaintiffs` goods to them.		
By reason of the aforesaid, the plaintiffs have suffered loss and damage.		
Particulars of Loss and Damage		
(a)	Market value of 1,064.021 kilolitres (905.39 m.t.) of MGO on 14.5.94	US$158,444.28 or S$244,479.52
(b)	Loss of profits on 1,064.021 kilolitres on sale at Indian Ocean at US$320 per KL	S$ 86,280.55 or S$133,130.88
(c)	Market value at Indian Ocean of the provisions listed in `Annex D	$10,326.10
(d)	Value of the equipment listed in `Annex	$93,768.50
		$481,705.00

The defence denied that the defendants were the plaintiffs` bailees. It was denied that the plaintiffs, that is the sub-charterers, entrusted the goods to the defendants. It asserted that the MGO was not at the material time the property of the plaintiffs and therefore entitled to the MGO. The defendants admitted that they sold the MGO but asserted that they did so `with the consent and/or knowledge of the main charterers and/or agents but denied the MGO belonged to the plaintiffs`. The defence went on to assert that a lien on the MGO in respect of moneys due to them under the time-charter with Cotan Petroleum. Denial of the plaintiffs` claim and asking them to prove their right was thus the essence of the defendants. Denial was the principal plank of the defendants` case. And then, the defendants brought third-party proceedings against Cotan Petroleum and Cotan Investments seeking payment of the money which was credited to Cotan Investments.

Hozun Oil`s action

While plaintiffs` action was making its course Hozun Oil & Trading Pte Ltd filed a suit (DC Suit 5187/95) against Johnny Tay and Ernie Yap. This was under their guarantee in respect of the indebtedness of Cotan Invesments (S) Pte Ltd on the purchase of the `Sea Endeavour`. The amount claimed was $64,750.77. This amount was arrived at after the credit of S$212,239.05. The writ was filed on 22 December 1995. Summary judgment was entered for $64,750.77 on 29 March 1996.

The Endurance 1

It would be salutory now to state in a summary form the decision in the suit Cotan Petroleum brought

against the defendants, **The Endurance 1** [1999] 1 SLR 661 . It was an admiralty action in rem against the `Tokai Maru` which had been renamed `The Endurance I`. There was a change of ownership which had been held to be of no consequence. The action was filed on 19 October 1995 by Adm 582/95. Cotan Petroleum claimed US$571,200 (US$800 x 714 days) for breach of charterparty in failing to provide a vessel according to the requirements of the time-charter. In the alternative they claimed US$836,400 (US$1,200 x 697). They made a further claim for conversion of two water makers valued by them at S$47,800.

The trial judge held that the defendants were in breach of the time-charter in failing to provide a vessel in conformity with the contractual specifications. Cotan Petroleum, however, did not terminate the time-charter on that breach. The defendants wrongfully withdrew the vessel because the notice they gave was outside the terms of the time-charter. For this the trial judge awarded damages at US$800 and not US$1200 per day from 8 April 1994 to 16 March 1996. They were also awarded the replacement costs of the two water makers as damages for conversion. Cotan Petroleum was also given costs on an indemnity basis. There was an appeal to the Court of Appeal.

The Court of Appeal varied the orders made below. The finding of the trial judge that there was breach of the time-charter as to the specifications of the vessel was held to be plainly wrong. The holding that the withdrawal of the vessel was wrongful was right. But the damages were recalculated to US$260,000 at US$800 for 325 days omitting the option period. There was a conversion of the water makers because demand for them had been made by Cotan Petroleum in May 1995. But the damages should be reassessed taking into account depreciation. The Court of Appeal cancelled the order as to costs made by the trial judge. One-third of the costs was awarded to Cotan Petroleum. One-third of the costs of the appeal was given to the defendants.

The law - conversion and bailment

The law applicable to the resolution of the issues in this case is as follows. The common law concept of conversion is too elusive to be expressed in words. This is because of the multifarious forms in which it may manifest itself. It is like a hydra with many heads. There can be conversion by taking, by wrongful detention, by wrongful delivery, by wrongful disposition or by wrongful interference. It may be based on possession, ownership or possessory title. In every case of conversion it is a vital importance to hold in the forefront of the mind the exact form of conversion that is asserted by the plaintiffs. Sometimes the idea of conversion is inextricably interwoven with the concept of bailment. It is so in this case. The claim in this case was founded on conversion stemming from bailment and sub-bailment. It is therefore necessary to take a close look at the principles of the law governing bailment and conversion as they affect this case.

Take this scenario: P entrusts a thing to M. M in turn entrusts it to D with the knowledge and consent of P. M is in the middle. In such situation there is a bailment and a secondary bailment by sub-bailment. This situation spawns three bailments: P to M, M to D, as well as a direct bailment between P and D. This was the situation in this case - a bailment and a sub-bailment. In that situation it is clear law that D, the sub-bailee owes a duty of care to P as well as to M. P, the first bailor, as well as M can directly sue D the sub-bailee for breach of duty of care as bailee: See **The Pioneer Container** [1994] 2 AC 324 and **The Winkfield** [1902] P 42.

In a situation of a bailment and a sub-bailment, the principal bailor, as a rule, cannot directly and independently demand delivery of the thing bailed from the sub-bailee who received it from the sub-bailor without consent and authorisation from the sub-bailee. Otherwise there will be scramble for possession. There will be conflicting claims and safe dealings will become impossible. In particular the

sub-bailee will be placed in a precarious position. There are exceptions to this rule - there may a contractual or other arrangement which obliges the sub-bailee to effect direct delivery to the principal bailor. For example, when one holds a bill of lading vesting the title to the goods in him the carrier sub-bailee must deliver it to the holder of the bill of lading and no one else: See **The Houda; Kuwait Petroleum Corp v I & D Oil Carriers** [1994] 2 Lloyd`s Rep 541, **Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd** [1959] AC 577.

Furthermore, if there a conversion of the article of bailment, both the bailor and the sub-bailor have a cause of action for conversion against the sub-bailee. The sub-bailor is entitled to recover substantial damages, that is the full value of the goods, from the converter sub-bailee. The basis of this rule was expounded in **The Winkfield** [1902] P 42 at p 55:

> *As between possessor and wrongdoer the presumption of law is, in the words of Lord Campbell in **Jeffries v Great Western Ry Co** `that the person who has possession has the property.*

In the same case, at pp 54-55 Collins MR said: `the wrongdoer who is not defending under the title of the bailor is quite unconcerned with what the rights are between the bailor and bailee, and must treat the possessor as the owner of the goods for all purposes quite irrespective of the rights and obligations as between him and the bailor`.

The principles stated in ***The Winkfield*** were approved and applied in **Chabbra Corp Pte Ltd v Owners of the Ship or Vessel Jag Shakti** [1986] AC 337 (a Privy Council Appeal from Singapore).

The principal bailee, that is the bailee who is in the middle, in that event is under an obligation to account to the bailor. The rule was stated by Scrutton LJ in **The Joannis Vatis** [1922] P 92 at p 103: The sub-bailor `would be entitled to recover the full value of the cargo against the wrongdoers, but would have to account over and would be liable to the owners of the cargo for their proper share`. The cargo owner is the principal bailor. Lord Atkinson expounded the point with explicit emphasis in **Eastern Construction Co Ltd v National Trust Co** [1914] AC 197 at 210:

> *... it would be against all notions of justice that the bailee who recovers the full value of the goods wrongfully taken out of his possession should be able to retain it for himself. The goods were not his, they belonged to the bailor. The money recovered under the judgment represents and is substituted for the goods themselves. To allow the bailee to keep it for himself would be to compensate him in damages for a loss he has never suffered ... the bailee who in such circumstances recovers the full value of the goods must account to the bailor for the sum recovered.*

Clerk & Lindsell on Torts (17th Ed, 1998), in para 13-143 presents this proposition of law:

> *Possession with an assertion of title, or even possession alone (which is the case of a bailee), gives the possessor such a property as will enable him to maintain an action against a wrongdoer: **for possession is prima facie evidence of property**. [Italics supplied by me].*

The proposition is amply supported by ***The Winkfield*** .

There stems from the above an important derivative rule which is relevant to this case. It is this: Where there are more than one bailor of a thing and one of them recovers or otherwise deals with a third person the other bailor is barred further recovery from the third person. `The wrongdoer having once paid full damages to the bailee, has an answer to the bailor,` said Collins MR in ***The Winkfield*** at p 61.

This basis of the rule is estoppel and implied authorisation. Once there was a conclusive dealing or settlement the cause of action against the third party is extinguished. This is especially so if the owner transfers his rights to the bailee without reservation of title. The purpose of the rule is to prevent double jeapordy.

**O`Sullivan v Williams** [1992] 3 All ER 385 states and illuminates the above principles with sparkling clarity. O`Sullivan allowed his girlfriend Linda to use his car while he was away on holiday. While the car was parked outside her home it was irreparably damaged by the defendant. Both brought an action against the defendant in which the first plaintiff claimed o1,300 as the value of the car and damages for loss of use of the car since the accident at o25 per week and the second plaintiff claimed damages for nervous shock and other distress and for loss of use. O`Sullivan`s claim was settled without prejudice to Linda`s claim. The judge dismissed Linda`s claim for damages for nervous shock and other distress but awarded her o400 damages for loss of the use of the car. The defendant appealed against that award. The appeal was allowed on the ground that the settlement of O`Sullivan`s claim as bailor barred Linda`s claim as bailee. Fox LJ with the agreement of Staughton and Beldam LJJ enunciated the following principles: A bailee can sue in tort in respect of the bailed goods. The bailee can sue a wrongdoer simply by reason of the bailee`s possession. Such possession is, as against the wrongdoer, full and complete ownership. It enables the bailee to recover the full value of the chattel. He must, however, account to the bailor for the amount recovered. The bailee having recovered damages against the wrongdoer the wrongdoer has an answer to any action by the bailor. The same principle must apply to the bailee if the bailor has sued. There cannot be separate claims by the bailor and the bailee. If the bailor recovers damages and the bailee has some interest in the property enforceable against the bailor, then the bailor must account appropriately to the bailee. Either the bailor or bailee may sue, and whichever first obtains damages, it is a full satisfaction. Any other rule would expose a tortfeasor to several actions founded on the same cause of action by persons with limited interests in the chattel. Once the bailor`s claim has been satisfied, the bailee has no claim to pursue arising out of the bailment. The bailee must look to the bailor for satisfaction in respect of the interest, if any, of the bailee.

It needs to be stated at once that the rule in **Hollins v Fowler** [1875] LR 7 HL 757 is outside the pale of the bailment situation. That applies when someone, albeit innocently, receives goods fraudulently taken away from its owner. In that situation the receiver before dealing with the goods is under an absolute duty to ensure that the person has proprietory in the goods he receives. It does not apply to a bailment scenario because the goods are voluntarily placed in the hands of a bailee and thus impliedly clothes him with authority and confers on him ownership by possession. Next, cases of competing claims of bunkers in the tanks of an arrested vessel ordered to be sold by the court also are outside the pale of the principles outlined above. Such cases are not conversion or bailment cases. The court adjudicates on competing claim as it would in an interpleader summons. Repeating myself, I add that the bailment rules I have outlined do not apply to the holder of a bill of lading.

Findings and conclusions

On the basis of all the evidence viewed as a whole and the principles of law outlined above I make

the following findings and conclusions. There was a bailment and a sub-bailment - first from Wonjin to the charterers and from the charterers to the owners. The plaintiffs in this case at once made an assertion and a concession to that end in the endorsement in the writ.

The bailment and the sub-bailment was first pursuant to and governed by the charter and sub-charter. When the main charter came to an end when the `Tokai Maru` was withdrawn, the bailments continued and were governed by an overlayer of the principles of the law of bailment I have outlined. There was no bill of lading in respect of the MGO or the other goods. The owners were justified in treating the charterers as owners of the MGO and other goods and dealing with them. The rule in ***Hollins v Fowler*** did not apply because the goods were not fraudulently taken from Wonjin International or the plaintiffs.

Under the principles of the law of bailment, the charterers were in proprietary possession of the MGO and the equipment. As such they were entitled to assert ownership rights against the owners. The charterers indeed did so. The owners too acted on the basis.

Although as a matter of law there was a sub-bailment, the plaintiffs, Wonjin International and the charterers throughout 1994 and the best part of 1995 were not aware of it. In the result Wonjin, and therefore the plaintiffs, asserted their rights only against the charterers. The charterers, as a matter of fact, accepted responsibility and dealt with the owners on their own behalf making themselves accountable to Wonjin International. At no time the plaintiffs or the Wonjin made a demand on the defendants for delivery of the MGO or the equipment.

In any event, on 10 June 1994 Wongjin International by issuing the invoices in favour of Cotan Petroleum relinquished all the rights in respect of the MGO and the equipment by exchanging them for the indebtedness of Cotan Petroleum for the values stated in the invoices. On an objective basis that was the result of issuing the invoices. Cotan Petroleum acknowledged the indebtedness. There was a binding agreement.

Above all the shipowners dealt with the charterers on the basis that the MGO and equipment belonged to the latter and sold the MGO and credit for it with the knowledge and consent of the charterers. Not only that. The charterers themselves asserted such a right at all relevant times and accepted the credit and thus confirmed the settlement on that basis. Thereupon, the plaintiffs or Wonjin lost their rights, if they had not lost them earlier to bring an action against the owners.

The action by the plaintiffs, in the circumstances was misconceived. They were confined to seek redress against Cotan Petroleum.

Albert Lim`s evidence

Albert Lim`s evidence was that in early May 1994 he had discussions with Johnny Tay about non-payment of moneys due from Cotan Investments to Hozun Oil. The amount was S$277,194.30 and it was in respect of the `Sea Endurance` sold to the former by the latter. Johnny Tay told him that the MGO on board the `Tokai Maru` belonged to Cotan Petroleum and that Albert Lim should sell the oil and set-off the proceeds against the moneys due from Cotan Investments to Hozun Oil. Purusant to that instruction Albert Lim got Hozun Oil to sell the MGO on board the `Tokai Maru`. The sale produced a sum of US$138,519.68 or S$212,443.53. On 10 June 1994 Hozun Oil wrote to Sea Sources that the sale had been effected and forwarded copies of the sale documents. Statements were sent to the buyers reflecting a credit amount of $212,443.53.

Johnny Tay`s evidence

Johnny Tay did not refute much of what Albert Lim said. Indeed he was not in a position to refute that. Johnny Tay admitted having dealt with Albert Lim. Johnny Tay admitted his companies owed $500,000 plus to Albert Lim`s companies. This meant that Johnny Tay as guarantor was also liable. He did not show the sub-charter to the defendants. He did tell the defendants about the plaintiffs. He was not in a position to pay anyone as he was tight. Wonjin asserted that it was Cotan Petroleum that stole the MGO and equipment. Wonjin`s representative, Mr Choy, came to Singapore in June 1994. It was his responsibility and he agreed to solve the problem. Choy asked Lim for payment and he agreed to pay and he would look towards the owner for all the claims. Choy agreed. The fact that the owners had taken the cargo and equipment was not the problem of Choy, Wonjin and the plaintiffs. Johnny Tay was handling the claim and he was going to claim from the owners and that was why he had agreed to compensate Wonjin. The invoices issued by Wonjin was in favour of Cotan Petroleum was evidence of sale and demand for payment. He did not pay Wonjin because he had no money. Above all, he acknowledged the contra account issued by Albert Lim and that credit was given to Cotan Investments: `We totalled up the money payable on the purchase and issued payment to which of the three companies I can say. Money went in the name of one company to one of defendants` company. They wanted us to issue to one company so we issued to one company. We did this for convenience.` In addition Johnny said this: ` ***I was under the notion that the goods belonged to Cotan*** . ***I formed this notion when they ran away with the goods*** .` [Italics are mine]. This is what Albert Lim said Johnny Tay told him that the MGO belonged to him at the time the vessel was withdrawn.

Then there was the affidavit of Johnny Tay in Suit No 1060 of 1995 against him and Ernie Yap. With full knowledge that credit had been given as shown in statements issued by Albert Lim`s compaies, he asserted with absolute positiveness that: `at the time of the withdrawal of the vessel, there was on board the `Tokai Maru` goods and materials which were the property of Cotan Petroleum: (a) two water makers, (b) bunkering equipment, (c) provisions on board, (d) refrigeration oil`. He went on to base his assertions on the invoices which he conceded before me was evidence of sale to Cotan Petroleum. He made these asertions and sought a credit when in fact credit had already been given to Cotan Investments for which was he liable.

I hold that it was because he was in debt and he was under pressure from Choy for payment of an admitted debt that he came up with the case of conversion of all the goods and materials. Cotan Petroleum`s claim for conversion of the two water makers succeeded because the Court of Appeal held that Cotan Petroleum `requested to be informed of the vessel`s location on 6 May 1995 and 8 May 1995 to enable them to take the water makers from the vessel. The owners did not reply and the water makers remained on board. On those facts the learned judge held that the owners had committed the tort of wrongfully retaining the charterers` water makers. We entirely agree with the learned judge.` This means that the charterers had not made a demand earlier and there was no demand from Wonjin or the plaintiffs directly to the owners.

At the trial of this action Johnny Tay made a major shift. He said that in May 1994, Albert Lim had begged him not to report the stealing of the cargo and to return the cargo and the goods to Wonjin. All this sounded rather bizarre because this was totally inconsistent with his view which he formed on the date of withdrawal that the cargo belonged to Cotan Petroleum. He never modified this view until after judgment was given in Suit 1060/95. Apart from that, taken in its entirety the evidence of Albert Lim was more credible than Johnny Tay`s. As a witness Albert Lim was firm and forthright; Johnny Tay was wobbly. Often Johnny Tay paused to think up an answer. Albert Lim impressed me as a witness of truth but not Johnny Tay. Johnny Tay was a supplicant to Albert Lim`s companies. There

was no reason for Albert Lim to fear Johnny Tay. They were friends until Suit No 1060 of 1995 was commenced.

As to why he made a volte facie his explanation was that he was wrong in his view and realized the error only when his lawyer pointed out the error. In other words there was a mistake of law. In my judgment the new evidence was contrived to give support to the legal advice he had received. The thrust of the new thinking was that Cotan Petroleum had no right to deal with Albert Lim and his companies. As has been demonstrated what Choy, Johnny Tay and Albert Lim thought and their conduct was well within the pale of law. The subsequent shift was incorrect. It was too late for Wonjin and the plaintiffs to assert their initial rights against the defendants. That would be against the law outlined in this judgment.

Miscellaneous points

Albert Lim was asked why he did not return the cargo and the equipment to the plaintiffs when the vessel was withdrawn. He said that no demand from them or Wonjin to the defendants. Insofar as conversion is asserted in the form of wrongful detention, as distinct from wrongful dealing, demand from the claimant to the defendant and the right to demand possession must be proved. There was no such proof in this case. Johnny Tay had said in evidence that he relayed the contents of a telex from Wonjin to the defendants. Albert Lim was asked about the fax Johnny Tay said he sent to the defendants. Albert Lim said he never received them. There was no proof that they were sent to Albert Lim or the defendants. The conduct of Johnny Tay and his evidence that he thought that Cotan Petroleum was the owner was inconsistent with him having sent the faxes. There was no mention of him having sent the faxes or that Wonjin was owner subsequently. There was much evidence to the contrary. The change of mind and mind occurred after Johnny Tay and Choy realised that Johnny Tay and Cotan Petroleum were not worth power and shot. Additionally the thrust of the plaintiffs` case was the sale of the MGO by the defendants.

It was contended for the defendants that the plaintiffs` claim was not sustainable that they had an interest in the goods at any time. It was further contended that no officer of the plaintiffs came to give evidence. I reject these arguments as unsupported by law. Wonjin were the agents of the plaintiffs. Even if the plaintiffs had no ownership in the MGO and the other goods, they were as charterers entitled to assert a claim.

Summary

On the basis of the analysis and conclusions I dismiss the plaintiffs` claim. As to the MGO it was sold with the consent and knowledge of Cotan Petroleum. If it was sold without their consent, there was a settlement after the defendants gave credit to Cotan Petroleum which accepted the settlement. As to the other goods there was no demand from the plaintiffs or Wonjin to the defendants for delivery of the goods before the action. In any event they relinquished their rights when they issued the invoices to Cotan Petroleum. In these circumstances there was no need to make an order in the third-party proceedings.

It cannot be denied that the plaintiffs were placed in an unfortunate position. This was because Cotan Petroleum and Johnny Tay failed to keep their promises to Wonjin and the plaintiffs. That said, it cannot be denied that this action by the plaintiffs overleapt the relevant facts and law which were kept out of their knowledge. For Choy said in his evidence that he was unaware of what had happened. He was not given the relevant information and advice.

Outcome:

Plaintiffs` claim dismissed.

Copyright © Government of Singapore.