Concordia Agritrading Pte Ltd v Cornelder Hoogewerff (Singapore) Pte Ltd [2001] SGHC 248

Case Number : Suit 1106/2000/V; RA 68/2001

Decision Date : 30 August 2001

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Loo Dip Seng (Ang & Partners) for the appellants/defendants; Sin Lye Kuen (Khattar, Wong & Partners) for the respondents/plaintiffs

Parties : Concordia Agritrading Pte Ltd — Cornelder Hoogewerff (Singapore) Pte Ltd

Judgment:

1. The appellants, Cornelder Hoogewerff (Singapore) Pte Ltd (hereinafter referred to as "CHS"), sought to have the action of the respondents, Concordia Agritrading Pte Ltd (hereinafter

referred to as "CAP"), struck out on the ground that it was time-barred. Their application was dismissed by the Senior Assistant Registrar. The appellants appealed against the decision of the Senior Assistant Registrar. I dismissed the appeal and set out below the reasons for my decision.

2. CAP, a company trading in agricultural commodities, including maize and soya bean, entered into a series of contracts with Lam Chuan Guan Pte Ltd (hereinafter referred to as "LGC") for the sale and delivery of Latin American and USA bulk commodities. The conditions of sale were "CAD ex Warehouse in either Sembawang Port, Port Butterworth or Port Klang".

3. CHS are warehousemen, who also provide warehouse management services for inventory control of goods stored in the warehouse. On 13 November 1995, CAP appointed CHS as the warehousing agents for their agricultural commodities that were shipped to Malaysia. According to the terms of the agreement, CHS would oversee the offloading of CAP’s cargo from vessels, the transportation of the same to a warehouse, at which the commodities would be stored, and the delivery of the cargo to LGC. It was also agreed that as CHS did not have its own handling and warehousing facilities in the respective ports whereas LGC had a contract with the authorities in the said ports for the leasing of warehouses and the use of handling services, CHS would utilise the handling and warehousing facilities available to LGC.

4. It was a term in CAP’s agreement with CHS that although the goods may be stored in warehouses provided by LGC, CHS shall only release the cargo entrusted to them to the party named by CAP in their written instructions.

5. In late 1997, LGC encountered financial difficulties and failed to perform their contractual obligations. As a result, CAP recalled the agricultural commodities stored in the Malaysian warehouses.

CAP then discovered that the quantity of cargo in the warehouses did not correspond with the quantity reported in the stock reports issued by CHS. Furthermore, some of the cargo had been damaged. On 18 March 1998, CAP wrote the following letter to CHS:

> We understand that part of the goods are damaged and part of the goods are not in the place where they are supposed to be.

You are and we hold you responsible for the above.

> We hereby invite you for a joint survey which is to take place as soon as possible.

6. It is CAP's case that CHS failed to take reasonable care of the cargo and/or wrongfully and/or negligently released the cargo or part thereof to persons unknown. On 24 March 1998, CAP informed CHS that preliminary estimates showed that 6,000 metric tons of maize were missing in Port Klang while 8,000 metric tons of maize and 7,000 metric tons of soya beans were missing in Butterworth. CAP demanded from CHS the payment of US$3,360,000 and the provision of security acceptable to them for a further sum of US$1,092,000.

7. CAP attempted to resolve their differences with CHS through arbitration. However, CHS refused to have the dispute resolved through arbitration on the ground that they were not obliged to do so. CAP filed OS No 581 of 1999 on 20 April 1999 for the purpose of having three arbitrators appointed to resolve their dispute with CHS. Their application was dismissed and the Court of Appeal confirmed on 22 February 2000 that CHS were not obliged to resolve their dispute with CAP through arbitration.

8. Having failed to have their dispute with CHS resolved through arbitration, CAP then instituted an action against CHS on 29 December 2000 for damages for breach of contract. In this action, CAP claimed to have suffered a huge loss of US$4,872,128.30 as a result of CHS' alleged failures.

9. CHS pointed out that CAP's cargo had been in the warehouses leased by LGC since November or December 1997, more than 12 months before the action was instituted by CAP on 29 December 2000. In view of this, CHS contended that CAP's claim was barred by clause 36 of chapter 1 of their Warehousing Conditions, which provided as follows:

> Any claims against the company on account of loss, damage or decrease in quantity of the goods given in custody to the company and, in general, on account of failure by the company to comply with their obligations, shall lapse after twelve (12) months of storage. In case of damage or decrease in so far as the company has not notified the customer of this damage or decrease, the said period of twelve (12) months shall commence at the end of the day on which the company has notified the customer.

10. CHS further argued that as the action was time-barred, it was frivolous or vexatious or an abuse of the process of the Court and should be struck out pursuant to O 18 r 19 of the Rules of Court.

11. Often enough, a contract contains a provision requiring that a claim be promptly made. In the context of the obligations of insurers and warehousemen, such as CHS, there are good reasons for requiring that claims be made promptly. The obvious commercial purpose of such a requirement is to enable the party against whom a claim is made to investigate the claim at the earliest opportunity and reduce the risk of fraudulent claims. (See, for instance, Bingham J's judgment in *Pioneer Concrete (UK) Ltd v National Employers Mutual General Insurance Association Ltd* [1985] 1 Lloyd's Rep 274, 278). Furthermore, the party against whom a claim is made promptly may be able to take steps to mitigate the consequences of a loss.

12. CHS' assertion that CAP's claim is time-barred is flawed. CAP had demanded compensation for their loss within the period specified in clause 36 of chapter 1 of their Warehousing Conditions. In the circumstances of this case, this clause did not have the added effect of requiring an action to be instituted by CAP within the period specified therein. In *Pera Shipping Corporation v Petroship SA (The Pera)* [1985] 2 Lloyd's Rep 103, 108, Slade LJ rightly reiterated that if there remains any real doubt, the ambiguity in a contract must not be resolved in such a way as to bar a possibly legitimate claim.

13. The appeal against the decision of the Senior Assistant Registrar was thus dismissed with costs.

TAN LEE MENG
JUDGE