

Appeal No. 22 of 1973  
 IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L  
 FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

1. WAH TAT BANK LIMITED  
 2. OVERSEA-CHINESE BANK LIMITED      Appellants
- and -
- CHAN CHENG KUM      Respondent

10

CASE FOR THE RESPONDENT - CHAN CHENG KUM

REFERENCES  
 TO RECORD

20

1. This appeal is brought by leave of the Court of Appeal of Singapore granted on 25th June 1973 against a decision of that Court (Wee Chong Chin C.J. and Chua and Choor Singh J.J.) given on 16th April 1973 dismissing with costs an appeal by the Appellants against the judgment of Winslow J. in suit No. 1284 of 1961 in the High Court of Singapore dated 24th July 1972, whereby the learned judge (i) dismissed the Appellants' claim in conversion against the Respondent, the First Defendant in the suit, as joint tortfeasor with Hua Siang Steamship Company Limited, the Second Defendant in the suit, on the ground that such claim was barred by reason of the Appellants having already entered final judgment, in the suit in question, against the Second Defendant without waiting for a determination as to the liability or otherwise of the Respondent, but (ii) held that, but for such bar, the Respondent

p. 154

pp.152, 153  
(at lines  
18 & 19)

pp.89-126

pp.115-122

REFERENCES  
TO RECORD

pp.115  
(lines 1-7)  
p.153 (lines  
1-8)

would have been liable in conversion together with the Second Defendant, and ordering that such judgment be affirmed not only on the grounds stated by the learned judge but also on the grounds that the Respondent did not procure or otherwise take part in the conversion committed by the Second Defendant so as to render himself a joint tortfeasor with the Second Defendant and that there was no evidence upon which the learned judge was entitled to hold that the Respondent did procure or otherwise take part in the said conversion so as to render himself such joint tortfeasor.

10

2. The principal questions which arise on this Appeal are :-

pp.116(line 32)  
- 122 (line 5)  
pp.136 (line  
29) - 146  
(line 13)

(i) Whether a Plaintiff, who has a single cause of action against two or more persons as joint tortfeasors, who sues them in the same action and who elects to and does obtain final judgment against one only, is thereby subject to the admitted common law bar against subsequently recovering judgment against the other or others (as Winslow J. and all three members of the Court of Appeal have held) or whether the effect of Section 11(1)(a) of the Singapore Civil Law Act (Cap.30) (which is in identical terms to those of Section 6(1)(a) of the United Kingdom Law Reform (Married Womens and Tortfeasors) Act 1935) is to relieve him of such bar and enable him, in the same action, to obtain, successively, final and different judgments against first one and then another and then another of such joint tortfeasors.

20

30

pp.103(line 33)  
- 115 (line 7)  
pp.146 (line  
14) - 151  
(line 37)

(ii) Whether, if the answer to the foregoing question is that a Plaintiff is not so barred the Respondent is (as Winslow J. held) or is not (as all three members of the Court of Appeal have held) jointly liable with the Second Defendant in respect of the conversions for which the Appellant recovered final judgment against the Second Defendant.

40

3. S.11(1) of the Civil Law Act is in the following terms :-

REFERENCES  
TO RECORD

11. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not) :-

- 10 (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
- 20 (b) if more than one action is brought in respect of that damage by or on behalf of the person whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the Plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the
- 30 action;
- 40 (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

REFERENCES  
TO RECORD

pp. 1-3

p.40 (lines  
24-26)

p.40 (lines  
26,27)  
p.146 (lines  
38-44) and  
p.151 (lines  
28-30)

p.123 (lines  
23-28) and  
p.135 (lines  
13-15)

pp.38,39

p.39 (lines  
18-20)

p.40 (lines  
33-36)

PRINCIPAL FACTS RELATING TO THE FIRST QUESTION:

4. By Writ dated the 30th September 1961 the Appellants instituted proceedings against the Respondent and the Hua Siang Steamship Company Limited (hereinafter called 'the Steamship Company') in respect, inter alia, of the alleged conversion of certain consignments of goods carried by the Steamship Company from Sibu in Sarawak to Singapore, such conversion being allegedly committed by the Respondent and/or the Steamship Company. 10

5. By a judgment dated the 30th December 1965 the High Court of Singapore (Kulasekaram J.) dismissed the Appellants claim against both the Respondent and the Steamship Company with costs.

6. From this judgment the Appellants appealed to the Court of Appeal. At an early stage of the hearing before that Court, it was agreed between the parties that the question upon whom liability, if proved, should fall could not be properly dealt with on the Appeal as its determination depended almost entirely on the credibility of witnesses. At some later stage, however, Counsel for the Appellants asked that judgment for damages to be assessed should be entered against the Steamship Company and pursuant to such request the Court of Appeal ordered, by Order dated the 7th July 1967, that the judgment of the High Court be set aside, that the Appellants' appeal be allowed, that judgment be entered against the Steamship Company for damages to be assessed, that "the remaining issue as to whether the...Respondent is also liable in conversion be remitted for re-trial" and that the Respondent and the Steamship Company pay the Appellants' taxed costs both in the High Court and the Court of Appeal. 20 30

7. From such Order the Respondent and the Steamship Company obtained leave to appeal to your Lordships' Committee. 40

8. Prior to the hearing before your Lordships' Committee the Appellants had proceeded to secure the assessment of damages against the Steamship Company, such damages being assessed on the 29th May 1968 by the Registrar in the sum of \$551,876.88 and interest at 6% from the 7th July 1967 to date of payment and being, on appeal to the judge, increased to \$570,500 and such interest. It is common ground between the parties that the Appellants thereby converted their interlocutory judgment for damages to be assessed into a final judgment.

REFERENCES  
TO RECORD

p.135 (lines  
21-26) and  
p.169

p.178 (lines  
21-24)

9. Neither the fact that the Appellants had taken such action, nor the possible effect thereof was raised or discussed on the hearing of the appeal to your Lordships' Committee which took place November and December 1970 and led to an order of your Lordships' Committee dated the 29th March 1971 dismissing the appeal and affirming the order of the Court of Appeal save as to certain matters of costs which were consequential upon your Lordships' Committee rejecting the reasoning of the Court of Appeal but upholding the Order on wholly different and very short grounds.

pp.40, 41

10. The issue remitted for retrial came on for hearing before Winslow J. in the High Court of Singapore in March 1972. At an early stage in the proceedings two preliminary points arose for decision :-

(a) Whether S.11(1)(a) of the Singapore Civil Law Act effectively removed the common law bar against recovering judgment against the Respondent which admittedly existed as a result of the Appellants' final judgment against the Steamship Company unless removed by the said section..

(b) Whether it was open to the Court, as was contended on behalf of the Appellants, to reconsider the whole question of liability and to hold, if appropriate, that the Respondent was solely liable for the conversion complained of, notwithstanding that the Appellants had secured a

REFERENCES  
TO RECORD

judgment that the Steamship Company was liable and a direction for re-trial of the remaining issue whether the Respondent was also liable.

pp.116(line  
32) - 122  
(line 4)

11. The learned judge held that the said section did not remove the common law bar and accordingly that the claim against the Respondent must be dismissed and further held that it was not open to him to proceed on any other basis than that the Steamship Company was liable for the conversion complained of and that the sole question was whether the Respondent was also (or jointly) liable.

10

pp.122(line 6)  
- 126 (line 29)

12. The Appellants did not appeal on the second point and the Court of Appeal unanimously upheld the learned judge on the first point (hereinafter called 'the Section 11 point').

Respondent's Submissions on the Section 11 point:

pp.90(line  
39) - 92  
(line 17)  
and pp.178,  
179  
p.117(lines  
12-17);  
p.136(lines  
29-31) and  
p.137 (lines  
20-25)

13. A large measure of agreement was reached between the parties on the matters involved in this, and their agreement was recorded in a document handed in to the learned judge. The substance of that agreement was that S.11(1)(a) of the Singapore Civil Law Act was only effective to remove the common law bar if the Respondent had not been "sued" within the meaning of the Section. This was accordingly the only matter for decision on this point by the learned judge or the Court of Appeal and is the only matter for decision by your Lordships' Committee.

20

30

14. The Respondent's submissions may be summarised as follows :-

(a) It is the first and principal rule of construction that words should be given their plain and ordinary meaning unless there is some good and sufficient reason to depart therefrom.

(b) In the plain and ordinary meaning of the word 'sued' the Respondent had been 'sued'. Proceedings had been pursued against him to judgment in his favour at first instance. An

40

appeal had been pursued against him to a judgment against him on the principal question in the case, namely, whether there had been a conversion. The order of the Court of Appeal included an order against him to pay the Appellants' costs both at first instance and in the Court of Appeal. On the Respondent's appeal to your Lordships' Committee the Appellants sought and obtained an order confirming the order of the Court of Appeal. In such circumstances it is plain that in any ordinary sense of the word the Respondent had been sued. Indeed, it is submitted that had the Respondent been asked, for example, after the judgment at first instance, whether he had been 'sued' and had replied that he had not, such answer would on the ordinary meaning of the word and in common sense have been untrue.

REFERENCES  
TO RECORD

p.39 (lines  
25-29)

10

20

(c) The Appellants' contention that 'sued' means 'sued to final judgment' is to put an unnatural meaning on the word for which there is no justification. Having proceeded in one action against two joint tortfeasors a Plaintiff has a complete freedom to decide whether he will obtain judgment against one or wait until the liability of both has been determined. There is thus no hardship in giving the word its ordinary meaning.

30

(d) If 'sued' means 'sued to final judgment', S.11(1)(a) is robbed of all meaning for the use of the words 'would if sued have been liable' presupposes that the person contemplated has not yet been 'sued'.

40

(e) To give the word the meaning contended for by the Appellants would involve a breach of the long established rule recently re-affirmed by the House of Lords in Cassell & Co. Limited v. Broome [1972] A.C. 1027 that there can only be one judgment and one award of damages against joint tortfeasors and in the same action in respect of the same damage.

REFERENCES  
TO RECORD

The Appellants already have one judgment against one tortfeasor in this action. If their contention is correct it would result in the Appellants being able to obtain another judgment in the same action against the Respondent which might be for a different principal amount and would certainly be for a different amount of interest.

It would also mean that, if there were several joint tortfeasors sued in one action, there could be several assessments of damages all of which might be for different amounts.

10

(f) S.11(1)(b) of the Singapore Civil Law Act indicates that S.11(1)(a) is directed not to a single action but to different actions. If the Appellants are correct the limitation on the amount of damages recoverable afforded by that sub-section would not apply. This is a plain indication that it was not within the intention of the legislature that the common law rule should be changed in respect of joint tortfeasors sued in one action.

20

(g) The Respondent's contentions are supported by the views expressed by Dr. Glanville Williams in his work "Contributory Negligence and Joint Tortfeasors" at p.68 which the Respondent adopts as part of his submissions. They are also supported by observations in the House of Lords in George Wimpey -v- British Overseas Airways Corporation [1952] A.C. 169, a case on S.6(1)(c) of the Law Reform (Married Women and Tortfeasors) Act 1935 in which views were expressed, obiter, as to the meaning of S.6(1)(a) of that Act which is identical with S.11(1)(a) of the Singapore Civil Law Act.

30

(h) Hart -v- Hall & Pickles Limited [1969] 1 Q.B. 405 on which the Appellants relied in the Court of Appeal does not assist the Appellants for it concerned S.6(1)(c) of the 1935 Act not S.6(1)(a) and several not joint tortfeasors.

40



(i) The matter at issue is in essence procedural, concerning the application and interpretation of a local act and the local administration of justice. It has been the subject of unanimous decisions by the local Court of Appeal and Court of First Instance. Such decision ought not to be set aside save (if at all) for cogent reasons. No such reasons exist.

10 FACTS RELATING TO THE SECOND OR SUBSTANTIVE QUESTION:

14. The conversion complained of consisted in the delivery of the goods in question by servants of the Steamship Company other than the Respondent, who was its managing director, to the shippers of the goods and not to the Appellants who were pledgees of the goods. It was by reason of the acts of these servants that the Steamship Company were held liable for the conversion.

20 15. The Respondent had been managing director of the Steamship Company since its incorporation on 30th December 1960. Prior to that time the Respondent had been sole managing proprietor of the unincorporated Hua Siang Steamship Company.

30 16. This issue was considered by Winslow J., notwithstanding that he had ruled against the Section 11 point; at the request of the parties and so as to avoid yet a further remission in the event of the Court of Appeal overruling him on the Section 11 point. He determined the issue in favour of the Appellants. On appeal to the Court of Appeal, that Court unanimously reversed Winslow J. on the point.

Respondent's Submissions on the SECOND QUESTION:

17. The Respondent's submissions may be summarised as follows :-

(a) It was for the Appellants to establish that the Respondent was liable in respect of the conversion complained of.

REFERENCES  
TO RECORD

- (b) In order so to establish the Appellants had to prove that the Respondent himself procured or ordered the acts of conversion committed by other servants of the Steamship Company, of which there was no direct evidence.
- (c) This was a matter which it had been agreed depended on credibility yet, at the trial before Winslow J., the Appellants sought to establish their case on no more than selected passages from the Respondent's evidence at the original trial, which they contended amounted to admissions, and the oral evidence of a Mr. Choo Chew Sing, the manager of the First Appellants, who proved no more than that after the conversions complained of had taken place he heard the Respondent tell his son Chan Kim Yam, another of the directors of the Steamship Company that in future no deliveries should be made without the proper documents. 10
- (d) The Respondent submits that the oral evidence of Choo Chew Sing establishes nothing of relevance. Any managing director would when faced with a claim be likely to give instructions designed to avoid similar claims arising in the future. 20
- (e) With regard to the passages of the Respondent's evidence relied on, the Respondent submits that there was nothing therein to justify Winslow J. in the conclusion, entirely inferential, that the Respondent had procured the acts of conversion complained of. 30
- (f) Such selected passages show no more than that the Respondent was properly concerned to see that if there was a misdelivery the Steamship Company should be properly protected. They constitute no evidence that the Respondent had procured misdelivery.
- (g) In so far as it may be necessary the Respondent submits that it was not justifiable
- p.146 (lines 38-44) and  
p.151 (lines 28-30)  
pp.106 (line 37) - 107  
(line 14)  
p.151 (lines 28-34)  
pp.77 (line 1)  
- 80 (line 7)
- p.104 (lines 40-42)  
pp.106 (line 39) - 107  
(line 14)  
p.114 (lines 22-27)  
p.149 (lines 35-41)  
p.151 (lines 1-22)
- p.151 (lines 9-15)

for the learned judge to draw any inference against him from the fact that he called no evidence. The evidence against him called for no explanation.

18. WHEREFORE THE RESPONDENT SUBMITS that the Order of the Court of Appeal in Singapore should be affirmed and this appeal dismissed with costs for the following among other

REFERENCES  
TO RECORD  
p.113 (lines  
10-13 and  
42-44)  
p.151 (lines  
23-37)

R E A S O N S

10 (1) BECAUSE both Winslow J. and the Court of Appeal were right in holding that the word "sued" in Section 11(1)(a) of the Singapore Civil Law Act must be given its plain and ordinary meaning.

(2) BECAUSE both Winslow J. and the Court of Appeal were right in holding that for the purpose of Section 11(1)(a) of the Singapore Civil Law Act the Respondent had been sued.

20 (3) BECAUSE both Winslow J. and the Court of Appeal were right in holding that by reason of their final judgment obtained against the Steamship Company the Appellants were barred at common law from proceeding further against the Respondent and that Section 11(1)(a) of the Singapore Civil Law Act did not avail the Appellants.

(4) BECAUSE the unanimous decisions of the local Courts should not be interfered with on matters of the kind in question on the S.11 point.

30 (5) BECAUSE the Respondent did not procure or otherwise take part in the conversion committed by the Steamship Company so as to render himself a joint tortfeasor with such Company.

(6) BECAUSE there was no evidence upon which Winslow J. was entitled to hold that the Respondent did procure or otherwise take part in the said conversion so as to render himself such joint tortfeasor.

REFERENCES  
TO RECORD

(7) BECAUSE the Court of Appeal was right in holding that the position was as stated in (4) and (5) above and Winslow J. was wrong in holding to the contrary.

(8) BECAUSE the decision of the Court of Appeal of Singapore was right and ought to be affirmed.

R.J. PARKER

HOWARD PAGE

Appeal No. 22 of 1973

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

---

---

O N A P P E A L

FROM THE COURT OF APPEAL IN  
SINGAPORE

---

---

B E T W E E N :

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANK  
LIMITED

Appellants

- and -

CHAN CHENG KUM

Respondent

---

---

CASE FOR THE RESPONDENT  
CHAN CHENG KUM

---

---

LINKLATERS & PAINES,  
Barrington House,  
59/67 Gresham Street,  
LONDON, E.C.2.

01-606 7080

Solicitors for the Respondent