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To: Transport Industry Operators

Bailee & Conversion

In his Judgment dated 3/8/2004, Judge Sakhrani of Hong Kong High Court held a logistics company liable in a cargo misdelivery claim of US\$152,660.40.

According to a sale contract dated 27/8/2002, the seller sold 640 metric tons of stainless steel in 140 coils to the buyer for US\$1,030,400. The goods were to be exported from Korea. It was agreed that the buyer should remit the entire purchase price to the seller's bank account two working days before the handing over of a bill of lading or delivery order by the seller to the buyer.

The seller issued an invoice dated 11/10/2002 to the buyer on learning that the vessel carrying the goods would arrive on or about 21/10/2002. The invoice amount was HK\$8,066,450. After giving credit (a) for the deposit of HK\$1,300,000 and (b) for the overpayment of HK\$58,787 by the buyer under another contract, the balance payable by the buyer was HK\$6,707,663. However, the buyer failed to settle the outstanding balance under this invoice within 2 working days before the delivery order would be given by the seller to the buyer. On or about 22/10/2002 the goods packed in 140 coils arrived in Hong Kong. As the buyer had failed to make full payment, the seller was not prepared to release the goods to the buyer.

The seller accepted the buyer's suggestion that the goods be stored with a logistics company which was acquainted with the buyer. The seller arranged for the goods to be stored with the logistics company which held the same as the seller's bailee. The logistics company collected the delivery order from the seller for the 140 coils and stored the same at a public storage area of Stonecutters Island.

A total of 120 coils of the goods were released to the buyer on divers dates between 4/11/2002 and 4/12/2002 after partial payments were made by the buyer to the seller. Whenever the buyer made partial payment of the price, the seller would instruct the logistics company to release the relevant and corresponding quantity of goods.

On 4/12/2002 the seller informed the buyer that if the buyer wanted to collect the balance of 20 coils of goods, the buyer had to pay the seller in the total amount of HK\$870,996 before 10/12/2002. The amount of HK\$870,996 included the outstanding purchase price and insurance premium as well as the commission due to the seller under another contract.

The seller had requested the logistics company not to release the remaining 20 coils to the buyer. However, the logistics company released the 20 coils to the buyer on or about 20/1/2003 without the prior knowledge and consent of the seller. In the Judge's judgment, the logistics company was storing the goods as bailee for the seller which was the bailor. If the buyer had an adverse claim to the 20 coils, the logistics company ought to have interpleaded. Instead the logistics company released the 20 coils to the buyer.

There can be no dispute that the bailee owes a duty to the bailor not to do any intentional act inconsistent with the bailor's rights in the goods the subject of the bailment. The bailee has a duty not to convert them. An estoppel arises at common law from the relation of bailor and bailee. As a general rule, a bailee is estopped from denying the title of the bailor from whom the bailee received the goods.

The Judge held the logistics company liable to the seller for the tort of conversion when it released the 20 coils to the buyer without the prior knowledge and consent of the seller. The seller should be entitled to damages for conversion.

A claimant in conversion can generally recover the value of the goods, whether or not this represents its actual loss. Thus the claimant can claim the value of goods destroyed, notwithstanding the fact that the claimant had previously sold them to a third party to whom risk had passed, and that third party had actually paid the claimant. Again, a buyer whose seller wrongfully retakes the goods can recover in full, even though the buyer may not have paid for them and by the retaking is relieved of the obligation to do so.

The seller claimed against the logistics company for the full value of the 20 coils namely, US\$152,660.40. The logistics company submitted, however, that the seller should not be entitled to claim the full value of the goods. On the evidence, the seller received HK\$248,330 on or about 27/12/2002 from the buyer. The seller had, therefore, received full payment for the goods and the Court should not award the full value of the goods as damages as this would amount to the windfall for the seller. The seller submitted that the Court should not enquire into the dispute between the seller and the buyer in assessing damages for conversion based on the full value of the goods.

The relationship of bailor and bailee is clear. The logistics company had a duty not to convert the 20 coils. By releasing the same to the buyer on or about 20/1/2003 without the prior knowledge and consent of the seller, the logistics company should be liable for the tort of conversion. The damages recoverable by the seller should be the full value of the goods namely, US\$152,660.40. The Court should not enquire into the dispute between the seller and the buyer. From the evidence of the seller, which the Judge accepted, the 20 coils were to be released to the buyer only upon the full payment of HK\$870,996 to the seller by the buyer. That was a matter between the seller and the buyer. The seller never received the full payment of HK\$870,996. The Judge fails to see how the bailee as the wrong-doer can rely on the payment of the sum of \$248,330 on 27/12/2002 by the buyer to the seller to defeat or diminish the seller's entitlement to the full value of the 20 coils as damages for the logistics company's tort of conversion. There is no question of the seller receiving a windfall.

The Judge held the logistics company liable to pay the seller for the full value of the 20 coils in the sum of US\$152,660.40 with interest from the date of conversion i.e. from 20/1/2003. The Judge also ordered the logistics company to pay the seller its costs of the action.

Please feel free to contact us if you have any questions or you want to have a copy of the Judgment.


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