Stuttgart Auto Pte Ltd v Ng Shwu Yong
[2004] SGHC 231

Case Number : DC Suit 395/2000, Suit 72/2003

Decision Date : 19 October 2004

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Tan Chee Meng and Josephine Choo (Harry Elias Partnership) for plaintiff; B Mohan Singh (K K Yap and Partners) for defendant

Parties : Stuttgart Auto Pte Ltd — Ng Shwu Yong

Contract – Formation – Acceptance – Defendant instructing plaintiff workshop to repair damaged car – Plaintiff requiring defendant's authorisation to commence repairs – Authorisation not forthcoming from defendant – Whether binding contract entered into between parties – Whether plaintiff entitled to recover towage and storage charges from defendant – Whether defendant entitled to counterclaim for deterioration of car and loss of use

Tort – Negligence – Duty of care – Whether plaintiff workshop owing defendant duty of care upon receipt of damaged car or upon receipt of defendant's deposit for repair of car – Whether duty of care existing given defendant's car remaining in workshop against plaintiff's wishes

19 October 2004 *Judgment reserved.*

Kan Ting Chiu J:

1 This is an exceptional case arising out of rather unexceptional beginnings. A car was damaged in a road accident, after which it was towed to a workshop for repairs. Then matters became contentious. No repairs were done for five years while the car owner and the workshop argued over the conditions for the repairs. The workshop asked the owner to remove the car and even had the car towed back to the owner's residence, but the owner refused to take it, and the car was brought back to the workshop. The workshop took action to compel the owner to remove the car from the workshop, and the owner filed a counterclaim for loss arising from the deterioration of the car and the loss of use of it.

2 The plaintiff, Stuttgart Auto Pte Ltd, the agent for Porsche cars, was the workshop in question. The car was a Porsche 964, registration number SBY8919S ("the car"). The defendant, Dr Ng Shwu Yong, was the registered owner of the car. However, she left her husband, Mr Dennis Chee Boon Keng ("Chee"), to deal with the repairs and the workshop.

3 On 24 August 1998, the defendant met with an accident while driving the car. She called the plaintiff's hotline and it was arranged that the car be towed to the plaintiff's workshop for repairs. On 28 August 1998, the plaintiff issued to the defendant an estimate of the cost of the repairs in the sum of $76,650.00. The plaintiff refused to carry out the repairs until the defendant had issued her written authorisation. The defendant refused to take the car away, and it remained at the workshop with no repairs done. The plaintiff tried to return the car on 15 May 2001, but was rebuffed. Although attempts were made to seek a resolution and revised estimates were issued, the impasse persisted. In the course of the hearing before me, I authorised the plaintiff to return the car to the defendant's residence, and this was done on 27 September 2003. I agreed with counsel for the plaintiff that the car should go back to the defendant as the counterclaim was for damages and not for an order of specific performance for the plaintiff to repair the car – see [10] below.

The pleadings

4 The action was filed by the plaintiff in the District Court in April 2000. In the Statement of Claim, the plaintiff alleged that the defendant had not given the necessary authorisation to carry out the repairs,[1] and had refused to remove the car. The plaintiff sought an order that it be allowed to tow the car to the defendant's residence, and it sought to recover towing and storage charges from her.

5 The defendant filed her defence on 9 May 2000, and amended it two and a half years later on 28 September 2002 to make a counterclaim. The size of the counterclaim caused the action to be transferred to the High Court.

6 In the Amended Defence and Counterclaim, the defendant denied that she had not authorised the repairs and asserted that:

(a) She had instructed the plaintiff verbally through Chee to proceed with the repairs;

(b) She had confirmed those instructions in writing; and

(c) When she deposited $60,000 with the plaintiff's solicitors, that was confirmation that she wanted the car to be repaired by the plaintiff.[2]

7 In the Counterclaim, the defendant alleged that:

(a) The plaintiff was the sole authorised service agent in Singapore for Porsche cars;[3]

(b) The plaintiff had refused to send the car to Germany to be repaired by the manufacturers, and she was unable to send the car to Germany herself without the plaintiff's clearance in writing.[4] (The defendant led no evidence to support these allegations);

(c) On 28 August 1998, the plaintiff had issued a quotation for the repair of the car. The defendant had accepted it "subject to surveyors [*sic*] approval" and had instructed the plaintiff to proceed with the repairs, but the plaintiff did not do so;[5]

(d) On 11 May 2000, the defendant wrote to the plaintiff's solicitors, M/s Colin Ng & Partners ("CNP"), to authorise the plaintiff to commence repairs and paid a deposit of $60,000,[6] and

(e) On 11 July 2000, the plaintiff sent another estimate for the cost of repairs. The defendant instructed the plaintiff to commence repairs. When the plaintiff requested the estimate to be signed, she faxed that to the plaintiff's solicitors on 29 November 2000, but the plaintiff still failed to carry out the repairs.[7]

8 From the Amended Defence and Counterclaim, the contract to repair the car was alleged to be constituted by (a) the acceptance of the quotations of 28 August 1998; (b) the letter to CNP of 11 May 2000 and the payment of $60,000; or (c) the return of the estimate of 11 July 2000 or 29 November 2000.

9 The defendant pleaded in the alternative that:

[T]he Plaintiffs were negligent in that as the sole authorized service agent in Singapore for

Porsches the Plaintiffs failed to repair or provide proper advice to the Defendant who had sent the Porsche to them for repair. The Plaintiffs owes [*sic*] a duty of care to the Defendant upon the receipt of the damage [*sic*] Porsche, or upon the receipt of the S$60,000.00 deposit for the repair of the Porsche.[8]

10 In her counterclaim she claimed:

1. Loss due to depreciation of the Porsche at (S$670,000.00 cost of car – S$80,000.00 scrap value of car) / 10 years life of car x 4 years repair time delay, or to the date of repair; total estimated at S$236,000.00

2. Loss of use based on S$300.00 per day x 365 days x 4 years, (This is based on market rental rate of about S$200.00 per day for a 2.5 litre capacity car. The Porsche is about 3.6 litre capacity) Total estimated at S$438,000.00

11 The hearing of the action spread over eight days in three tranches on 7 and 8 April 2003, 15 September to 22 September 2003 and 16 April 2004.

12 On the first day of the hearing, the defendant applied to amend the Amended Defence and Counterclaim further, mainly to add a further cause of action of bailment to the counterclaim. I disallowed the application because it was plainly unjustified for the defendant to add a new cause of action a year and a half after she had filed her counterclaim, and leaving it to the commencement of the trial to do it when all the facts she was relying on were known to her from the time she made the counterclaim.

13 The hearing did not proceed smoothly. This was due partly to Chee being argumentative and evasive in the witness box. To compound that, he was unable to continue with his evidence after his first attendance on grounds of his health. This led to my direction after several delays in continuing with the hearing that the defence was to close if he continued to be unavailable, after which he returned and resumed his evidence with no apparent difficulty. Counsel also contributed by not confining themselves to the pleadings. As a consequence, the case lost focus on occasions, and matters not pleaded were brought into contention. I will, however, confine my decision to the issues pleaded.

Whether there was oral authorisation

14 The defendant had called the plaintiff's hotline and arranged for the car to be towed to the plaintiff's workshop on 24 August 1998. In her affidavit of evidence-in-chief, she deposed that:

I had on 24 August 1998 authorized the Plaintiffs, Stuttgart Auto Pte Ltd to repair the Porsche to its mint original condition and I undertook to pay the invoice amount and all other costs which may be incurred in the course of the repair work, less any deposit. I told the Plaintiffs to repair the Porsche and the Plaintiffs accepted my offer to repair in that they arranged to tow the Porsche to their workshop for the repairs. Subsequently, they also accepted a deposit of S$60,000.00. I left the costs of repair to the Plaintiffs.

15 She was asked about the arrangements made on 24 August 1998:

Q: Was there any agreement that the repairs and the costs of repairs [were] subject to an appraisal being done on the car?

A: No, we didn't have time to discuss that. It was at the accident and I was crying and I called and he [Andrew Ang, Sales Manager of the plaintiff] answered so he said, "Don't worry, I'll get it done, nicely repaired it properly back to you" and I said, "Sure, go ahead."

Q: Was there any agreement on the amount of deposit that you had to place before Stuttgart will proceed with the car's [repairs]?

A I don't remember discussing that with him.

Q Was there any indication given to Andrew whether you were paying for the repairs yourself or claiming from insurance?

A No.

Q So it is your evidence that without agreeing on those matters that I've just highlighted Andrew said he would repair your car?

A Andrew said he would take care of everything. He would get the car towed back to the workshop and he would repair it, not to worry.[9]

16 From the evidence, all that was agreed was that the car was to be brought to the workshop to be repaired. Nothing else was discussed as to the scope, time, costs and payment for the repairs. Clearly no contract was formed in this conversation. Furthermore, the oral instruction referred to in the Defence and Counterclaim was not entered into directly by her, but by Chee on her behalf.

Whether there was authorisation in writing

17 There is a significant difference in the parties' approach and position on this issue which was reflected in the pleadings. The plaintiff's case was that the defendant had not issued the *authorisation* it required for the repairs to be carried out. The defendant's case was that she had issued *instructions* for the car to be repaired. An authorisation and an instruction may not be the same thing. For example, an instruction for the repairs would be "Get my car repaired and I will pay for it." But a workshop receiving this instruction may require more from the owner before it agrees to take on the job. It may want the owner to authorise the scope of the repairs to be done, the costs for the repairs, the terms of payment, *etc*. In this situation, no contract is formed until the authorisation is given by the owner to the workshop.

18 Thus, there is a question whether that defence truly addressed the plaintiff's case on this point. The plaintiff's case was that the defendant had not authorised the repairs and costs particularised in the estimate of 28 August 1998 and the subsequent estimates. It never disputed that the defendant had given and repeated her request that her car be repaired. The nub of the case is whether they had entered into a contract to repair the car.

19 The defendant accepted that the plaintiff had issued the quotation of 28 August 1998. In para 16 of her Amended Defence and Counterclaim, she claimed that she "accepted the quotation but subject to surveyors [*sic*] approval". There was no documentary evidence of this alleged acceptance. When the defendant produced a copy of a letter of authorisation alleged to have been returned, it presented a very different picture (see [30] below).

20 On the contrary, the plaintiff wrote to the defendant more than a month later on 8 October 1998 that:

> We note that your vehicle was towed in to our workshop on the 24 of Aug 98 evening.
>
> While a quotation and survey had been carried out, we have yet to receive any further authorisations.
>
> Kindly let us know your instructions and written authorisation early.
>
> Please be informed that, as the quoted job is of a high value, we will require a 50% of the quoted amount as a deposit before we will proceed with repair.
>
> Please also be informed that a storage fee will be levied from 16th of Oct 1998 until the vehicle is started on the repair job. The fees will be $15.00 per day.

21 There was no record of any retort that the authorisation had been returned previously. It is to be noted that even if there was an acceptance as alleged in para 16 of the Amended Defence and Counterclaim, it was a qualified or conditional acceptance as it was subject to the surveyor's approval.

22 The defendant also relied on a $60,000 deposit for the repairs paid to CNP, evidenced by CNP's official receipt therefor dated 12 May 2000. It was not contended that the payment *per se* was authorisation.

23 This payment was referred to in a letter from the defendant to CNP dated 11 May 2000, where she stated that she undertook to pay for the repairs and that "I shall deposit cash cheque $60,000 as security deposit or cash $20,000 and signed credit card" but without stating that she was giving the required authorisation for the repairs. The promised payment was made on 12 May 2000. However, it was not alleged in the Amended Defence and Counterclaim that the defendant also gave the required authorisation at the same time she made the payment. Indeed, if the authorisation were given to the plaintiff and the required payment were made, there would have been no reason for the repairs to be held back, or for the subsequent estimates to be issued.

24 On 11 July 2000 the plaintiff prepared two copies of a further estimate for the repairs in the sum of $53,379.20. This estimate was sent to the defendant by CNP on 13 July 2000 with the specific request: "Please sign and return the original copy of the estimate cost of repair."

25 Chee acknowledged receipt of this estimate and deposed that he had replied to CNP on 7 August 2000, *inter alia*, as follows:

> Please instruct Stuggart to commence repairs urgently – immediately ASAP to SBY 8919 S, I agree to meet all relevant costs which you can deduct from the deposited $60,000 progressively.

and alleged that "the Plaintiffs were trying to be difficult and demanded the Estimate Cost of Repair dated 11 July 2000 to be returned".[10]

26 He was referring to a letter from CNP dated 16 November 2000, which informed him that the plaintiff wanted the estimate of 11 July 2000 signed and returned by 30 November 2000. He claimed that he wrote to CNP on 30 November 2000 and gave further instructions for repairing the car, and forwarded the signed authorisation. Mr Anthony Chey, the solicitor with CNP then in charge of the

matter, denied receiving any authorisation from the defendant at any time.

27 The defendant's case on this point kept changing. It was pleaded in para 20 of the Amended Defence and Counterclaim that "the Defendant faxed the estimate of cost of repair that was signed by the Defendant, to Colin Ng & Partner [*sic*] on 29 November 2000", with no reference to any subsequent posting of it. However, Chee deposed in his affidavit of evidence-in-chief that the fax did not go through, and he posted the authorisation to CNP on 30 November 2000. If that was the simple truth, why was this not pleaded? I find it difficult to understand or believe the defendant's position, and I accept Mr Chey's evidence that he never received the authorisation from Chee.

28 The defendant's attitude to the authorisation was clearly shown when Chee was re-examined by defence counsel on the last day of the trial. At that stage, a letter of authorisation[11] signed by the defendant was produced for the first time. According to Chee, the letter was similar in form to the one that came with the estimate of 28 August 1998.[12]

29 Chee claimed that he returned the signed letter to the plaintiff's workshop manager Mr Chow Siew Kai ("Chow") in October 1999,[13] but that was not shown to him when he gave evidence. Indeed, this was never produced by the defendant before that day.

30 Nevertheless, this letter of authorisation (with handwritten words added thereto denoted in italics and portion cancelled shown) was significant:

> LETTER OF AUTHORISATION
>
> I, *Dr Ng Shwu Yong*, I/C number *4685818M*, owner of vehicle SBY 8919 S (Porsche 964 Cabriolet) hereby authorise Stuttgart Auto Pte Ltd to proceed with repairs quoted on estimate reference "WSQ/0502/99"
>
> I will make a deposit of 50% of the estimated value on the quotation to Stuttgart Auto Pte Ltd upon this authorisation. (*Quantification of 50% to be discussed*)
>
> I also undertake to pay the invoice amount less the deposit amount and all other cost which may be incurred in the course of the repair work.
>
> ~~I understand that I am giving this authorisation out of my own initiative and will not hold Stuttgart Auto Pte Ltd liable or responsible for any and all cost to me.~~ *Not proper as duress techniques.*
>
> --- sgd ---
>
> _____ _____
>
> Signature of owner of SBY 8919 S Date

31 If this letter had been returned to the plaintiff, why was that not pleaded or put to Chow? That aside, the significance of the form was immediately obvious and brought on the following exchange with Mr Mohan Singh, counsel for the defendant:

> His Honour: I think that is the crux of the thing, Mr Mohan. If it hasn't occurred to you now and this is demonstrated in D1 [the letter of authorisation]. He doesn't mind paying but he doesn't like the terms. The form of the authorisation is not acceptable. If nothing is clearer, it's in D1.

Mr Mohan: I'm obliged, your Honour.

His Honour: You see, that is the crux of the whole, that is one of the clearest example. He didn't want the last paragraph. He wasn't comfortable signing the thing because its contents were not acceptable to him. The sum was eventually acceptable to him. That is crystal clear but the terms were not and that's why I am telling. Very soon you are going to do your written submissions. You have to come back and address this because no amount of evidence, agitation, altercation is going to change. The fact of the matter is we all with the benefit of our experience know what makes a contract. If I am willing to contract with you on a certain basis, you either accept it or you walk.

Mr Mohan: Very well, I'm obliged.[14]

32 It was very clear that the defendant was only prepared to sign the letter of authorisation that the plaintiff needed with the amendments. That being the case, she had not accepted the plaintiff's terms, and there was no contract between them.

33 Mr Mohan Singh addressed this point in his written submissions[15] thus:

As the learned Judge has rightly pointed out at NE719, the issue is primarily: Are the Plaintiffs right to withhold repairs on the car simply because the Plaintiffs wanted a disclaimer from liability? The Defendant contend that the Plaintiffs do not have such a right as the Plaintiffs did not bring up such a term at the time of contract, namely for the contracts entered into on 24 August 1998, on or around 28 August 1998, 12 May 2000, and on or around 29 November 2000. The Plaintiffs are therefore precluded from using a term they subsequently introduce [*sic*] into the contract to disclaim liability under the contract. If the term is so important to the Plaintiffs such as to be regarded as a condition of the contract, which upon failure to comply would entitle the Plaintiffs to repudiate the contract for repairs, the Plaintiffs should have brought the issue up during negotiations; and not after the contract for repairs had been concluded.

34 The submission is sustainable only if there was a prior concluded contract, but I have found no prior or later contract. The references to contracts of 2000 were out of place because Chee alleged that he returned the authorisation to Chow in October 1999. If that event took place, it must have happened before 2000 as Chow left the plaintiff's employ in November 1999. Apparently even counsel had difficulty following the defendant's case. As there was no prior concluded contract, there was nothing to prevent the plaintiff from adding to or modifying its terms when dealing with a difficult customer. The latter had two options: accept the terms offered, or find another repairer.

Conclusion

35 There being no contract for the plaintiff to repair the car, the counterclaim fails.

36 As the car had already been returned to the defendant, there is no necessity for any order therefor now. Instead, I will give judgment to the plaintiff for the cost of delivering the car to the defendant on 27 September 2003. I also order that the defendant pay the plaintiff damages for not removing the car from 16 October 1998 (as the plaintiff had stated in its letter of 8 October 1998 that storage charges were payable from that day) to 27 September 2003. As no rate of storage charges had been agreed between the parties, this shall be assessed by the Registrar.

37 The counterclaim fails where it was based on any contract for the repair of the car. It also fails on the alternative basis of negligence in that there was no duty of care on the plaintiff, as the

car remained in the workshop against the plaintiff's wishes.

38 The defendant is to pay the plaintiff the costs of the action to be taxed on the High Court scale. I order that the $60,000 the defendant had paid to the plaintiff be applied towards the damages and costs payable to the plaintiff.

---

[1]Statement of Claim para 4

[2]Amended Defence and Counterclaim para 3

[3]Amended Defence and Counterclaim para 12

[4]Amended Defence and Counterclaim para 15

[5]Amended Defence and Counterclaim para 16

[6]Amended Defence and Counterclaim para 18

[7]Amended Defence and Counterclaim paras 19 and 20

[8]Amended Defence and Counterclaim para 22

[9]Notes of Evidence pages 544-545

[10]Affidavit of evidence-in-chief of Dennis Chee of 18/7/2002, paras 11 and 12

[11]D1

[12]Notes of Evidence pages 706, 707 and 710

[13]Notes of Evidence pages 707 and 708

[14]Notes of Evidence pages 718 to 720

[15]At para 171 of the Defendant's Submissions