IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1980] SGHC 28

Suit 1401/1977

Between

Bank of Canton Ltd

… *Plaintiff*

And

Dart Sum Timber (Pte) Ltd

… *Defendant*

GROUNDS OF DECISION

Companies — Directors — Powers; Credit and Security — Guarantees and indemnities — Guarantor; Statutory Interpretation — Statutes — Amending

Version No 1: 11 Sep 2026 (01:05 hrs)

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Bank of Canton Ltd v Dart Sum Timber (Pte) Ltd

[1980] SGHC 28

Suit 1401/1977
D C D'Cotta J
10 October 1980

1 The plaintiffs` claim is for $401,793.70 plus interest under a written guarantee dated 31 July 1974 (exh P2) by which Dart Sum Timber (Pte) Ltd (hereinafter called the defendant company) guaranteed payment on demand of all moneys which were then or might thereafter be owing by Ta Leong Produce (Pte) Ltd (hereinafter called Ta Leong) on the general balance of its account with the plaintiffs.

2 The claim is in respect of four advances made on Letters of Credit as follows:

(1) Letter of Credit No CB-21145

dated 25 October 1975 ... $ 124,176.74

(2) Letter of Credit No WTB-21422

dated 21 November 1975 ... $ 75,763.13

(3) Letter of Credit No WTB-21455

dated 25 November 1975 ... $ 37,824.35

(4) Letter of Credit No WTB-21441

dated 25 November 1975 ... $ 122,921.63

3 The guarantee was executed by Wong Kee Loh (hereinafter called Wong) and Ong Say Beng both directors of the defendant company and was in compliance with cl 97 of the articles of association - exh P1.

4 The defendants contend that they did not authorise the signing of the guarantee and that the guarantee so signed was without their authority, express or implied; furthermore the defendants also contend that the advances were made in violation of s 133A of the Companies Act (No 10 of 1974) which came into operation on 15 November 1974.

5 The questions for consideration of the court are as follows:

(1) was the guarantee ultra vires;

(2) did Wong have authority to sign the guarantee;

(3) is the guarantee unenforceable under s 133A of the Companies (Amendment) Act;

(4) has a valid demand been made.

6 Incidentally Wong was last seen and heard of in Singapore in March 1976.

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7 On the question of ultra vires, according to the Memorandum and articles of association of the defendant company, one of the objects for which the defendants was established under cl 3(p) was `to guarantee the obligations and contracts of customers and others`. It is quite obvious from this that the defendant company has express powers to guarantee contracts of its customers.

8 It will be observed that the composition of Ta Leong as at 30 June 1974 comprised the following directors: Ong Say Beng, Wong Kee Loh, Hii Siu Chiong, Ting Hie Ing and Hii Yii Pan.

9 The paid up capital at that time was 600,000 of which Wong owned 400,000 shares. It is also important to note that the official address of Ta Leong and the defendant company was given as 6-A, Sixth Floor, Far Eastern Bank 156, Cecil Street, Singapore. According to the evidence both offices shared the same premises with a glass partition separating them and the name plates of the two offices were placed one on top of the other.

10 It is pertinent to note also that Wong figured prominently in the defendant company and according to the extract from the Companies register in 1974 the defendant company had four directors, namely, Wong Kee Loh, Ong Say Beng, Hii Yii Pan and Tan Kian Kuen of whom no mention was made throughout the proceedings and who can be presumed to have no say in the running of the company. The number of shares taken up to 16 August 1974 was 820,000 of which Wong and his wife owned 449,000 shares ie 54% of the total amount of shares issued. The other directors owned the remaining shares of which Hii Yii Pang had only 105,000 shares.

11 The next question for consideration is - Did Wong have authority, express or implied, to execute the guarantee on behalf of the defendants, the

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guarantee being executed by Wong and Ong Say Beng. In considering this, it is most desirable to refer to the evidence, ie to the conduct of the parties and the surrounding circumstances at the time of the execution of the guarantee. It is also important to note that Wong signed all the directors reports; he was the managing director of the defendant company; he also signed the balance sheets, cheques and Annual Reports. He was elected chairman of the defendant company. In fact, according to the evidence of PW1 Yap Siong Eu, the regional adviser to the Bank of Canton who used to visit the office of the defendant company from time to time, he said that his impression was that `Wong was the boss of the show` and he was satisfied that Wong was representing the defendants. Yap also stated in his evidence that he made searches in the Registry of Companies and ascertained the position of Wong and his shareholdings before requiring the defendant company`s guarantee which Wong gave him duly signed by himself and witnessed by Yap. Where the persons managing a company do so in a manner consistent with its Articles and Memorandum of Association such persons dealing with the company are not affected by any internal irregularities - ***Royal British Bank Turquand*** (1856) 6 EL & BL 327; [1843-60] All ER Rep 435.

12 Being the managing director of the defendant company as he then was, Wong had authority, it may be either express or implied and in this connection, that is what Lord Denning MR in ***Hely-Hutchinson v Brayhead Ltd*** [1968] 1 QB 549, 583 had to say:

> *It is express when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is implied when it is inferred from the conduct of the parties and the circumstances of the case.*

13 Having regard to the shareholdings of Wong and his wife together amounting to 54% of the entire issued share capital and having regard to the

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evidence of Hii Yii Pan himself that each director had copies of the Memorandum and articles of association and the annual audited accounts of the company, there is no doubt that Wong had full power express, ostensible and implied to execute the guarantee on behalf of the defendant company. Wong was also involved in opening an account for the defendant company with the Bank of America in February 1977 and arranging credit facilities to finance the export of timber from Sarawak, one of the two main commodities which the defendants dealt with - the other being pepper.

14 As against this, we have the evidence of Hii Yii Pan one of the directors of the defendant company who said that the only function of Wong as Chairman of the defendant company was to sign cheques; apart from that he performed no other functions. Furthermore, he stated that Wong was unfamiliar with the timber trade. On important matters he would have discussions with Wong but apart from this Wong played no active part in the company whatever. He never gave instructions to Wong to open the bank account or raise loans for the company. He was shocked when he first received a letter from the solicitors of the plaintiffs regarding the alleged claim against the letter of guarantee. He never made any representations to PW1 Yap Siong Eu as regards Wong`s authority. Furthermore, he alleged the letters of guarantee were a fraud on him by Wong and PW2 Ong Say Beng against the company. Under cross-examination, however, Hii Yii Pan contradicted himself. He never knew when he was appointed a director or when Wong was appointed a director. He admitted that Wong was authorised to sign applications for letters of credit, that Wong could sign directors reports and balance sheets, that Wong could out vote him on any matters by virtue of his shareholdings. A close scrutiny of the evidence of Hii Yii Pan and the answers he gave to questions in cross-

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examination showed that he knew nothing of the running of the business. I did not believe him and I rejected his evidence.

15 I was satisfied from the evidence that when Wong obtained the advances by way of letters of credit he did so on behalf of the defendant company and that Hii Yii Pan (DW2) was fully aware of what Wong had done. Wong was the main shareholder of the defendant company and he ran and managed the business. He executed the guarantee with Ong Say Beng who is also a director on behalf of the company. In my view in executing the guarantee he did so with the concurrence of the other two directors. However I am fully aware that there are dicta in some of the English cases suggesting that a chairman of a company does not have unlimited authority to bind the company merely by virtue of his office and it is for this reason that I earlier commented upon the fact that the execution of the guarantee must be considered in the light of the surrounding circumstances prevailing at that time which, if I may reiterate, is this: Wong was the driving force of the company: he did what he liked by virtue of the fact that he owned the majority of the shares and apparently knew the business well while the others merely acquiesced to whatever was done by him. I am fortified in this view by the fact that when Hii Yii Pan received AB1 (Pink) which is a letter of demand sent by the plaintiffs` solicitors to him, although he said in evidence that he was shocked when he received it, he did nothing about it which clearly indicates he was fully acquainted with the position and the letter came as no surprise to him. If in fact the guarantee was executed without his knowledge he should in the normal course of business have reacted by denying its existence forthwith, repudiating it and even challenging, its authenticity; however, he remained silent and did nothing.

16 Now s 133A of the Companies (Amendment) Act (No 10 of 1974) reads as follows:

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> *Subject to the provisions of this section, it shall not be lawful for a company:*
>
> *(a) to make a loan to another company;*
>
> (b) to enter into any guarantee or provide any security in connection with a loan made to another company by a person other than the first-mentioned company, if a director or directors of the first-mentioned company is or together are interested in shares in the other company of a nominal value equal to one-fifth or more of the nominal value of its equity share capital.

17 This amending section came into force on 15 November 1974 some three months after the entry into the guarantee. It is therefore irrelevant to this action.

18 It is necessary in construing the section to give effect to two fundamental principles of statutory interpretation, namely:

> (i) that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication` - ***Maxwell*** on Interpretation of Statutes 12th Ed p 215; and
>
> (ii) that `if there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged` (Ibidp 240).

19 To give to the section the meaning contended for by the defendants would violate both principles.

20 The conduct penalised by the section is the entering into of a guarantee. Section 133A of the Companies Amendment Act came into operation on 15

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November 1974 and affects all guarantees made on or after that date. The present guarantee was entered into on 31 July 1974 although the advances were made after 15 November 1974. The section said nothing at all which could or might invalidate any guarantee already entered into at that date nor its performance, enforceability or discharge. The guarantee made on 31 July 1974 is expressed to be `a continuing guarantee`; it is not a succession of separate guarantees.

21 There is no reason or justification for giving the section retrospective effect. To do so would have invalidated overnight a large number of guarantees held by banks and others, in good faith as security, in Singapore and would involve a large number of perfectly respectable guarantors in the commission of criminal offences, a result which it is inconceivable the legislature could have intended without express terms.

22 Lastly, has a demand been made? There can be no doubt that the answer to this question is in the affirmative, and the defendants do not appear seriously to dispute this. The various demands made are referred to in paras 4 and 5 of the statement of claim. Any one of these is sufficient for the plaintiffs to succeed.

23 From the evidence, I find that the directors of the defendant company were fully aware that Wong Kee Loh had executed the guarantee on behalf of the defendants and it was done with their consent and acquiescence. In the circumstances there will be judgment for the plaintiffs for the amount claimed with interest and costs.

24 ***Claim allowed.***

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D C D'Cotta J

KS Chung (Chung & Co) for the plaintiffs
YM Jumabhoy (YM Jumabhoy & Co) for the defendants

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