IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1989] SGHC 1

SUIT NOS 3740 OF 1980 AND 3959 OF 1980

Between

GROUNDS OF DECISION

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

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Balfour Williamson (Singapore) Pte Ltd v Joyce Lee Yon Yin (Chee Ming & Anor, third parties)

[1989] SGHC 1

SUIT NOS 3740 OF 1980 AND 3959 OF 1980
Lai Kew Chai J
01 January 1989

1 Cur Adv Vult

2 In these consolidated actions, the plaintiffs, Balfour Williamson (Singapore) Pte Ltd, of Singapore, are claiming against the defendant the sum of $872,186.03, interest and `extension commission` defined as `additional commission` in the confirming facility letter dated 22 March 1977 entered into between the plaintiffs and Golden Lady (Malaysia) Sdn Bhd (the principal). In the second action, Balfour Williamson Co Ltd, of London, are claiming against the defendant the sums of US$47,519.21 and $41,323.56, interest and also the additional commission. The claims are made against the defendant as a surety under a guarantee in writing dated 5 April 1974 and signed by the defendant in favour of the plaintiffs. The defendant had joined two of the co-sureties as third parties for contribution and indemnity. But these third parties, having been adjudged bankrupts earlier, failed to appear at the hearing of these actions and I ordered the trial of the action, which had been long outstanding, to proceed. The official assignee, on behalf of the third parties, informed the court that they are adopting the defences of the defendant and that if these defences were to fail,

the third parties would not dispute their liability to contribute and indemnify the defendant who will have to prove the debts in bankruptcy in the usual way. On the official assignee`s request, I excused his attendance in court.

3 The defences common to both actions may be briefly summarized as follows. Firstly, it is claimed that the defendant`s guarantee did not cover the facilities granted by the plaintiffs to the principal pursuant to the facilities as evidenced by the facility letter of 22 March 1977 as it was given, so the defendant asserts, for facilities granted in an earlier contract as evidenced by the letter of facility dated 21 March 1974 which had been superseded by the 22 March 1977 facility letter. This defence therefore raises a construction point as to the scope of the April 1974 guarantee. Secondly, if the guarantee extended to cover the facilities granted pursuant to the letter of facility of 22 March 1977, the defendant in the alternative asserts that there has been a variation of a material term without the consent of the defendant and that she is therefore discharged from all liability under the guarantee. It is said that it was part of the agreement that the plaintiffs would obtain a `cross` guarantee from a related company incorporated in Singapore known as Golden Pte Ltd to guarantee or indemnity the defendant, and the plaintiffs having failed to obtain it, had varied this material term of the principal agreement and had accordingly discharged the defendant as the surety. This defence also requires an interpretation of what had been agreed, so far as the `cross` guarantee is concerned. Thirdly and finally, it is claimed that the plaintiffs had recently settled with the principal in an action in the High Court in Johore Bahru by reason of which the liability of the defendant has been discharged or extinguished. This defence requires a consideration of the effect and purport of the agreement of compromise reached between the plaintiffs and the principal so far as the liability of the defendant, as the surety, is concerned. For completeness, I should mention that originally,

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

on the pleadings, the defendant had disputed the alleged debt due by the principal to the plaintiffs. This ch allenge was deleted by an amendment of the defence on the first day of the hearing and is no longer a live issue.

4 Before I set out the commercial background giving rise to the issues between the plaintiffs and the defendant, I should briefly describe the parties to these proceedings. The plaintiffs, a company incorporated in the United Kingdom, is a confirming house. The other plaintiffs are a Singapore company within the group. For a commission, they attended to the confirmation of purchases of their clients. In the transactions in question they paid for the purchase of fabrics and equipment and they delivered the documents of title to the principal in exchange for usance bills of exchange duly accepted by the principal. They have associated companies, amongst others, in Singapore and Australia. The defendant and her brother, Lee Lip Chong, were at all material times directors and significant shareholders of two companies, namely, the principal which is incorporated in Malaysia and Golden Pte Ltd, a company incorporated in Singapore. These companies were manufacturers of garments, having factories in Singapore and Johore Bahru, and for that purpose had purchased a great deal of fabrics of various descriptions from overseas suppliers. They required credit facilities to finance their purchases. The plaintiffs` group of companies provided the finance which would have been repaid with commission and usual charges by the principal after they had turned the fabrics into account. So far as the role played by the defendant in the two companies is concerned, I find that she was at the material times the driving force in the two companies and that, being the mind and management of the two companies, she knew fully and precisely the transactions between the two companies and the plaintiffs. On the evidence I was also satisfied that she had

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

negotiated with Anthony Ho, a director of the plaintiffs` Singapore company, for the facilities and their subsequent increases.

5 **The background**

6 In early 1974 the principal and Golden Pte Ltd applied to the plaintiffs for confirming facilities. The defendant and Lee Lip Chong, as the managing director, met with Anthony Ho Shee Jan, a director of the plaintiffs` associate company in Singapore. In consequence, the plaintiffs agreed by a letter dated 21 March 1974 to attend to the confirmation of the purchases of the principal up to M$335,000 (Â£60,000) in spread bills. Fixed date drafts would be drawn at 150 days D/A for acceptance on first presentation. The agreement with regard to guarantees stated as follows:

> *Guarantees:*
>
> *This facility is subject to the personal guarantees of (the defendant), Chee Ming, Lee Lip Chong and Chhoa Sick Jin, being obtained. Also the cross guarantee of Golden Pte Ltd, Singapore.*

7 There was also a provision for any late payment of the bills. It read:

> *Penalty commission:*
>
> *When granting facilities to new clients, we naturally expect all our bills to be paid at maturity without exception. However, in the event of a bill extension being exceptionally required due to extenuating circumstances, an additional commission of 1/2% will be charged for every 30 days or part thereof that the bill remains unpaid after original due date.*

8 The April 1974 facility letter was accepted by the principal on whose behalf Lee Lip Chong signed the acceptance of the terms and conditions thereof. All the personal guarantees and the corporate guarantees were signed by the sureties concerned. It is now necessary to reproduce the material parts of the

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

guarantee signed by the defendant. The document was headed `Guarantee` and it read, so far as is material, as follows:

> *I Joyce Lee Yon Yin of 14, Jalan Tarban, Singapore 15 and I Chee Ming of 120, Jalan Kichil, Singapore 14 and I Lee Lip Chong of 209, Tembeling Road, Singapore 15 (hereinafter together referred to as `the guarantors` which expression shall include the guarantors` successors and assigns) hereby request the Balfour Williamson Group (which expression shall mean all the companies in the group as defined hereafter and as are hereinafter referred to as `the group` and shall include their respective successors and assigns) to act or having already acted to continue to act as a confirming house for Golden Lady (Malaysia) Sdn Bhd of 7 Miles, Jalan Kota Tinggi, Johore Bahru (hereinafter called the purchasers) and or from time to time to confirm purchases of goods for the purchasers and or from time to time to accept negotiate or purchase any bills or drafts on such terms as the group may think fit on behalf of the purchasers and or to give or arrange credit or accommodation or financial facilities to or for the purchasers on such terms as the group may think fit.*

9 In consideration of the group complying with the aforesaid request the guarantor(s) hereby agree(s) as follows:

> 1 To pay or repay to the group forthwith on demand:
>
> (i) all sums which may at time be or become due from the purchasers to the group including interest and the group`s usual charges in respect of all or any transactions between the purchasers and the group;
>
> (ii) all sums which the group may at any time be or become liable to pay to any person, firm or corporation as a consequence of any transactions between the purchasers and the group;
>
> (iii) all costs and expenses of whatsoever nature incurred by or on behalf of the group in obtaining or attempting to obtain payment of the sums referred to in (i) hereof or in contesting any of the liabilities incurred or alleged to have been incurred under (ii) hereof;
>
> (iv) all costs and expenses of whatsoever nature incurred by or on behalf of the group in safeguarding, selling or otherwise

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

> howsoever dealing with any bills drafts documents or goods in any way relating to or connected with any transaction between the purchasers and the group.

10 Clause 2 of the guarantee dealt with the continuing nature of the guarantee and a guarantor`s right to give notice of termination of the guarantee after the expiry of a two-week notice. Clause 2 read as follows:

> *This guarantee shall operate as a continuing guarantee to the group and shall continue to bind the guarantor(s) notwithstanding any intervening payments on the part of the purchasers and notwithstanding any time consideration or other indulgence of whatsoever nature which may at any time be granted by the group to the purchasers so that this guarantee shall not terminate wholly or in part until all sums payable or repayable under cl 1 hereof shall have been duly paid or repaid to the group.*

11 Provided always that the guarantors or any of them or in the case of the death of a guarantor his personal representatives may deliver two weeks notice to the group at Roman House, Wood Street, aforesaid whose effect shall be as follows. On expiry of such notice this guarantee shall terminate and shall not apply as regards sums due to the group in respect of any new transactions entered into between the purchasers and the group after such date of expiry ...

12 According to Anthony Ho, the account was active from the start. By 22 January 1975 the plaintiffs agreed, as evidenced in their letter of that date, to increase the confirming facility to M$560,000 (SP 100,000) in spread bills outstanding at any one time. The letter stated that `(a) 11 other terms and conditions as listed in our original facility letter to you dated 21 March 1974 remain unchanged.` No fresh guarantees were sought nor obtained from the personal and corporate sureties. Anthony Ho further stated in evidence that in early 1977 Lee Lip Chong and the defendant saw him and requested for a further increase in the confirming facilities to M$lm, which request was granted. A new

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

facility letter dated 22 March 1977 was issued by the plaintiffs. The principal accepted the terms and conditions thereof. I need mention that the provision in this facility letter regarding guarantees read as follows: `This facility is subject to the personal guarantees of Joyce Lee Yon Yin, Chee Ming, Lee Lip Chong and Chhoa Sick Jin and company guarantee of Golden Pte Ltd.` The provision for the additional commission remained the same, except that it was described as `additional commission`, the descriptive word `penalty` having been dropped. Nothing turned on this.

13 I should also refer to the plaintiffs` letter dated 4 April 1977 by which their facility letter of 22 March 1977 was sent to the principal. In view of the first defence, it is relevant to quote the whole text which is as follows:

> *Golden Lady (M) Sdn Bhd*
>
> *c/o Golden Private Limited*
>
> *215, 3 Boon Keng Road*
>
> *Singapore 12*
>
> *4 April 1977*
>
> *Dear Sirs,*
>
> *We enclose a new facility letter which supersedes our letter of 21 March 1974, and subsequent amendments, advising updated conditions of business between us. We are very pleased to be able to confirm herein our agreement to an increase in your facility. Some adjustment to commission rates has regrettably been necessary owing to changing circumstances. However, we are pleased to advise that certain new services will now be available through our Singapore company, and our representatives will shortly be calling on you to outline these in more detail.*
>
> *Yours faithfully,*
>
> *For: Balfour, Williamson & Co Ltd*
>
> *Sgd: PWL Findlater*
>
> *Area Director*

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

14 It is common ground that 24 bills of exchange drawn by the plaintiffs and accepted by the principal were outstanding and they total the sums claimed in these proceedings. Most of the principal`s acceptances were signed by the defendant. The principal failed to pay the bills on the due dates and the plaintiffs commenced these proceedings against the defendant in Singapore. At the same time, the plaintiffs also commenced proceedings in the High Court in Johore Bahru against the principal. Those proceedings were in the midst of being heard in Johore Bahru when they were compromised and settled. The defendant personally attended the hearing and the negotiations which led to the compromise.

15 As the defendant relies on the settlement between the plaintiffs and the principal as having extinguished her liability under the guarantee, I propose setting out the terms very briefly. The agreement was entered into on 17 October 1988 between the group of the plaintiffs and the principal. Both parties were represented by solicitors. It set out the claims in the High Court of Johore Bahru and those pursued in the High Court in Singapore. Both sets of claims, though made against the principal in Johore Bahru and the defendant in Singapore as the surety, were of course for the same amount. The plaintiffs agreed to compromise and settle their claims against the principal on the principal`s agreement to pay M$300,000 by three instalments on the dates fixed. Time for payment of the instalments was made the essence of the contract and it was agreed that any default would mean that the entire claims of the group of the plaintiffs would become immediately due and payable.

16 So far as the defendant is concerned, she was not cited as a party to the agreement but she was expressly referred to in a recital in the agreement and she also signed sch 1 annexed thereto. The recital read as follows:

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

> *And whereas Joyce Lee Yon Yin hereby agrees and consents to this settlement (see sch 1 annexed herein) and that the settlement reached herein in respect of the sums claimed will not prejudice the Balfour Groups` legal rights in Singapore actions and further agree that legal action commenced by the Balfour Group in Singapore will be preserved.*

17 Schedule 1 of the agreement read as follows:

> *Schedule 1*
>
> *Consent and confirmation*
>
> *I, Joyce Lee Yon Yin (I/C No 0781563/H) hereby confirm that I have read this agreement and understood its contents herein contained and I hereby give my consent.*
>
> *Signed by the said)*
>
> *Joyce Lee Yon Yin)*
>
> *(I/C No 0781563/H)*
>
> *in the presence of:) Sgd*
>
> *Sgd*

18 The principal has paid M$200,000 to the plaintiffs and there is due to be paid the final sum of M$100,000 by 31 October 1989.

19 **The first construction point**

20 The first defence which is raised requires me to interpret the scope of the only guarantee signed by the defendant.

21 Counsel for the defendant recognized, as he quite properly had to, that the operative and other relevant parts of the guarantee already recited expressly provided that the guarantee shall be a continuing guarantee. That recognition underlines the distinction between a guarantee which is specific and one which is continuing: see O`Donovan Phillips, ***The Modern Contract of Guarantee***

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

(1985) pp 154-155. 1 did not understand, and it will be quite unfair to attribute to counsel for the defendant, his argument to be that the scope of the guarantee did not extend to subsequent transactions which had been increased. His argument is that the continuing nature of the guarantee would be spent and the guarantee would no longer operate once the original agreement for the confirming facilities, subject to variations of the limits and the other terms, had been terminated and a new agreement had come into existence. In applying that construction to the facts of this case, counsel for the defendant points out that the plaintiffs had, by their letter of 4 April 1977, admitted that their facility letter of 22 March 1977 was `new` and that it had `supersede(d)` the earlier contract of 21 March 1974. Counsel further points out that one of the group of companies had been omitted, the maturity dates had been changed and that the commission rates were different. The reference to a `cross` guarantee by Golden Pte Ltd was dropped.

22 Counsel for the plaintiffs stressed the operative words in the guarantee which may be summarized as follows: (a) the defendant requested the plaintiffs to act as a confirming house for the principal and `from time to time` to, inter alia, purchase any bills or drafts on such terms as the plaintiffs `may think fit` and, further, to give accommodation or financial facilities to the principal `on such terms as the (plaintiffs) may think fit`; (b) the defendant had by cl 1 agreed to pay `all sums` which may `at any time` become due thereunder; (c) cl 2 stipulated that the guarantee shall `operate as a continuing guarantee`; and (d) there was already a provision by which the defendant could bring the guarantee to an end by a two-week notice. He submitted that the guarantee would continue to operate to attach liability in respect of any liability arising out of the series of transactions envisaged under the guarantee.

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

23 In my judgment I agree with the construction of the guarantee as canvassed on behalf of the plaintiffs. The contention of the defendant is materially flawed in two respects. First, it does not give any or any sufficient effect to the express provisions of the guarantee which I had summarized. The guarantee in this case extends to any liability arising out of the series of transactions within its scope and the series of transactions may be created by a contract or a series of contracts for the confirming transactions. Liability, if any, attaches under the guarantee so long as the transactions are of the type mentioned in the guarantee, and they are between any one or more companies within the group of companies as contractually defined on the one hand and the principal obligor on the other, whether or not the transactions had arisen out of a single contract, and whether or not such a contract is subsequently varied, or out of a series of contracts. Secondly, to accede to the construction put upon the guarantee by the defendant would be tantamount to ignoring the essential feature of the guarantee, which is to guarantee a series of future transactions as described. When applying this construction to the facts in this case, I must observe that such changes as there were in the 1977 facility letter were those commercially to be expected and they did not in any material respect alter the nature of the transactions as to take them out of the ambit of the guarantee.

24 **The second construction point**

25 This refers to the defendant`s submission that the expression `Also the cross guarantee of Golden Pte Ltd` meant that the plaintiffs had agreed to obtain the corporate guarantee to guarantee, back to back so to speak, the personal guarantors. The factual matrix which requires mention is that, at the material times, the plaintiffs had agreed to extend confirming house facilities to both the principal and Golden Pte Ltd. It was contemplated that there would be cross

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

corporate guarantees. In my view that was all that the expression was meant to convey. Having regard to the context of the plaintiffs` group providing guarantees for themselves, why should the question of the guarantee of the personal guarantors arise? If such a question should have arisen, it would have been more of an indemnity which should normally be provided in a document or agreement between them and would not have involved the plaintiffs` group. In the light of my view on the meaning of the expression, the question of any variation does not arise at all.

26 **Extinguishment of liability**

27 The general rule is that if a creditor, without having received full payment, agrees to discharge the debtor from any further liability, the guarantor will be absolutely discharged: ***Cragoe v Jones*** (1873) LR 8 Ex 81. The rationale of this general rule is obviously to protect the debtor who, otherwise, may still be liable to indemnity a guarantor who is sued by such a creditor. Mellish LJ robustly said in ***Re Natal Investment Co*** (1870) 6 Ch App 43 at p 47 that without the general rule it would amount to `a fraud on the principal debtor`. It is settled law, however, that although an unconditional release of the debtor discharges the guarantor, the creditor`s rights against the guarantor may in certain circumstances be preserved despite the release. One such circumstance is where, in the agreement between the creditor and the debtor, it is expressly agreed that the creditor`s rights against the guarantor is preserved. This proposition is evidently unexceptional because the debtor would have known that the guarantor would be or would probably be sued and that, in turn, recourse would be sought against the debtor by way of indemnity. In effect, the debtor would be taken to have agreed to be only partially released and is not unconditionally released from his liability.

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

28 The arguments of counsel for the defendant are along the following lines. He says that the plaintiffs and the principal had `fully and finally settled` their claims and that what had been subscribed to under the hand of the defendant to the compromise agreement did not `amount to anything more than an admission that the plaintiffs have a right to litigate their claims in Singapore`. He further says that there was not in the compromise agreement an agreement between the plaintiffs and the defendant, binding on her to be liable on the guarantee, of the nature equivalent to the clear and binding agreement in the case of ***Davidson v M`Gregor*** 151 ER 1244. Counsel for the plaintiffs also relies on this case as directly helpful to the plaintiffs. In that case, the plaintiff being one of the creditors of an insolvent debtor, entered into a composition and agreed to discharge the debtor upon the agreement of the defendant, the guarantor, that the composition would not discharge the defendant from his liability under the guarantee.

29 In my view, there is in this case sufficient consensual assent on the part of both the principal and the defendant, as the guarantor, that the liability of the defendant, if any, would be preserved and that it was left to this court to determine liability. The other side of the coin of preserving the legal rights of the plaintiffs is to preserve the liability, if any, of the defendant. They go together and are both preserved, both as to rights and as to liability respectively. Neither the principal as the debtor nor the defendant as the guarantor can be heard to complain as they plainly envisaged their contingent liability depending on the outcome of these proceedings. I accept the evidence that in all probability the plaintiffs would not have settled with the principal if they were required to give up their recourse against the defendant. Further, the plaintiffs also rely on the provision in cl 2 of the guarantee which provided that the guarantee would continue to bind the defendant notwithstanding `any ... other indulgence of

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

whatsoever nature which may be` granted by the plaintiffs `so that this guarantee shall not terminate wholly or in part until all sums payable or repayable under cl 1 hereof shall have been duly paid or repaid to the group`. I accept the plaintiffs` contention that this provision is another circumstance under which the defendant is not relieved of her liability under the guarantee, notwithstanding the compromise agreement.

30 Accordingly, there will be judgment against the defendant in the sums claimed by the two plaintiffs less the sum of M$200,000 received by the plaintiffs apportioned in the ratio which their respective claims bear one with the other. The defendant is also ordered to pay the costs of these proceedings to the plaintiffs. Counsel shall submit the draft orders for my approval in due course.

31 Order accordingly

Lai Kew Chai J

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