IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 107

Suit No 9683 of 1985

Between

Malayan Banking Berhad

… *Plaintiff*

And

Willie Management Pte Ltd
Loh Yoke Yin

… *Defendant*

GROUNDS OF DECISION

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

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Malayan Banking Berhad v Willie Management Pte Ltd and Another

[1993] SGHC 107

Suit No 9683 of 1985
Lai Kew Chai J
11 May 1993

1 **Judgment:**

2 Coram: Lai Kew Chai J

3 Cur Adv Cult

4 J U D G M E N T

5 In this action, the plaintiffs, as bankers, are claiming the sum of $1,593,677.74, interest thereon at an agreed rate and costs against the second defendant under a "joint and several guarantee" in writing dated 10 Mar 1982 signed by the second defendant and one Ong Chee Hong ("Ong") under which the second defendant severally agreed to guarantee the payment of all advances made by the plaintiffs to Willie Management Pte Ltd ("the debtor company"). The plaintiffs had obtained judgments against Ong Chee Hong, who was adjudged a bankrupt on 2 Aug 1985, and against the debtor company. The judgment against the debtor company was obtained in this action.

6 The sole issue of fact in the trial of this action is whether the plaintiffs, represented by its branch manager, Chua Peng Ngoh ("Chua") of its Victoria Street branch, Singapore, had in late October or early November 1984 orally and expressly agreed with the second defendant, who was represented by Ong, to discharge the guarantee. It was common ground that there was no other issue or any other defence in this action. If the second defendant satisfies this court on a balance of probabilities that there was, as she alleges, a concluded oral contract to discharge the guarantee, this would have in law operated as a rescission of the contract of guarantee evidenced in the document dated 10 Mar 1982 and the plaintiffs' claims against the second defendant must be dismissed with costs.

7 The burden was on the second defendant to prove the oral agreement. She sought to discharge the burden of proof by relying principally on the evidence of Ong. Ong was at all material times a management consultant. He was and is a Malaysian. In 1982 he and his young son held the entire beneficial interest in all the shares of the debtor company in which he and the second defendant were directors. The second defendant had no part to play in the day to day running of the debtor company. She agreed to be a director as she was and is a Singapore citizen, and Ong needed a Singaporean to be a director. Ong's wife, who is the sister of the second defendant, could not be a director as she was practising as a public accountant and could not be connected with a secretarial company which was serving a common pool of customers.

8 It was not disputed that it was Ong who had applied for banking facilities from the plaintiffs. In February 1982 the plaintiffs granted to the debtor company overdraft facilities of $1.5 million to be secured by a legal mortgage of office suites 301, 302 and 303, 3rd floor, Chiat Hong Building of No. 110

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Middle Road, Singapore. Those units were valued at $2 million. By a guarantee dated 10 March 1982 Ong and the second defendant agreed to pay to the plaintiffs on demand all moneys owing by the debtor company. Clause 5 of the guarantee provided that "it shall be without prejudice to ...nor shall (the guarantors) be released or exonerated by", inter alia, "other guarantees which" the plaintiffs might then or any time thereafter hold from any other persons in respect of the moneys guaranteed thereunder. Clause 6 of the guarantee also provided that the guarantors could terminate the guarantee as to future transactions by 14 days' notice in writing.

9 According to Ong, he dealt with the then branch Manager, Low Beng Lai. Ong was quite often in Low Beng Lai's office. His frequent visits were mainly on business but there were also social calls. This was to be expected as officers of that branch in that locality, like any other branches of banks, would know their customers (particularly the major ones) quite well and there was also some informality about the place. Ong said that he usually waited for the branch manager in his room even though he was not there. The branch manager's room had half glass partitions and it could be seen from the outside by other bank officers of the branch. Nobody objected. According to Ong he had recommended a lot of business to the branch. His two companies, namely the debtor company and Vincent Ong Pte Ltd, were also major customers of the branch. The employees of the plaintiffs' branch, including the security guard, knew Ong.

10 In 1984 the directorship of the debtor company changed. The second defendant resigned as a director and she was replaced by her husband, Loon Chee Ngai ("Loon"). That resignation arose out of family dispute between the second defendant and Ong's wife. Ong informed Low Beng Lai in June 1984 of

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the intention of the second defendant to withdraw from the guarantee, before the new branch manager, Chua, took over. Ong also told Low Beng Lai that her husband, Loon, was willing to replace his wife as the guarantor. Low Beng Lai indicated that he foresaw no problems. Ong later in his evidence in chief talked of his communications with Chua about the changes. At this stage, I have to remark that at the trial I had more than once wished that the management and presentation of the case for the second defendant had been better organised, in fairness to her.

11 He said in July or August 1984 he told Chua about the second defendant's intention to withdraw from the guarantee which was to be replaced by the guarantee of her husband, Loon. According to Ong, Chua agreed sometime in October to November 1984 to release the guarantee of the second defendant and substitute it with Loon's guarantee. Chua said he would prepare the new guarantee for Ong and Loon to sign. He said Chua effectively took over management of the branch in August 1984. Ong continued to visit Chua quite often. He continued to introduce customers to the branch. There were no changes in the staff at the branch and Ong could go into Chua's office as he did before when Low Beng Lai was the manager.

12 The new guarantee, as arranged, was prepared by Chua on behalf of the plaintiffs. By a letter dated 21 Nov 1984 Chua on behalf of the plaintiffs wrote to the debtor company about the debtor company's overdraft and that of Ong's other company. They stood respectively the previous day at $1,546,098.22 and $1,042,408.34. Chua referred to his "daily calls" to Ong to reduce the two overdraft accounts, pointing out that only a sum of $4,454.00 was paid and that Ong's companies had not paid the total of $20,000 in October as promised and that at the date of the letter the sum of $65,000 as promised for November 1984

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had not been paid. Referring to the changes in the directorship, Chua stated at the end of the letter as follows: "As the present Directors are Mr Ong Chee Hong and Mr Loon Chee Ngai, kindly go to our Solicitors Shook Lin and Bok to sign a fresh guarantee for $1.5 million."

13 Ong said he did not arrange with Loon to sign the guarantee before the plaintiffs' solicitors who sent the guarantee, which were filled in with all the particulars, to the solicitors of Ong's companies. Ong's solicitors passed on to him the guarantee which he and Loon signed. On 9 Dec 1984 Loon's signature was affixed at his mother in law's house at Broadrick Road, Singapore, in the presence of one Ong Ping Seng, the brother of Ong, who was working in Taiwan at the time of this trial. After the guarantee was signed, Ong told Chua about it and said that he would walk across from his office and hand him the guarantee. Chua told him to give it to him or to leave it on his table if he was not in.

14 Ong said that he wrote a covering letter dated 10 Dec 1984 to the plaintiffs' branch. He produced a pink copy of it, exhibit D1. The letter stated as follows: "As required, we are glad to forward herewith a Letter of Guarantee duly executed by Mr Ong Chee Hong and our new director, Mr Loon Chee Ngai on 9 Dec 1984 to replace the previous letter of Guarantee executed by Mr Ong Chee Hong and our ex-director, Mdm Loh Yoke Yin." Ong's solicitor, Mr Chan Kam Foo, confirmed that Ong had given him a copy of exhibit D1 before the hearing of the plaintiffs' application for summary judgment in April 1986. Mr Chan Kam Foo saw D1 much later, and in fact, the plaintiffs did not know of the existence of Dl until 21 Sep 1991.

15 Ong further testified that on the afternoon of 10 Dec 1984 he visited the plaintiffs' branch to hand over the covering letter and the substitute guarantee.

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Chua was not in. So he left the guarantee and the covering letter on Chua's table. He put a paper weight on the documents. According to Ong, he called Chua the following day. Chua confirmed that he had received the new guarantee.

16 In cross examination, Ong did not agree that it was plaintiffs' practice to require new directors of a borrower company to sign new guarantees. He insisted that Chua had agreed that Loon could replace his wife as the guarantor. He insisted that he had returned the replacement guarantee with the covering letter of 10 Dec 1984. It was not disputed that the account was well secured by the three office units. Counsel for the plaintiffs suggested to Ong that the only reason why Loon signed the guarantee was because he was also the guarantor for Vincent Ong Pte Ltd to the tune of $1.4 million. Ong denied the suggestion that all that Chua did was to regularise the plaintiffs' practice which required every new director of a borrower company to sign a guarantee. Ong also denied that his two accounts were in default; they were within the tolerance limits although their overdraft limits were exceeded. He said both accounts were secured by real property. In the case of Vincent Ong Pte Limited, its overdraft was secured by the legal mortgage of 2 office units in Orchard Towers, Orchard Road, Singapore. Ong denied that Chua did not know of the changes of the directors. Ong was obviously right because Chua's letter named Loon, which he could not have done if he did not know that Loon was the new director. He explained that he had D1 always in his file; he had given a copy to his solicitor at an early stage of these proceedings. For some reason, which was not given nor elicited by any cross examination, no mention of this covering letter, exhibit D1, was made at the first available opportunity. Again, this lapse in the management of this case must not be allowed to affect the assessment of the evidence in this case, to the detriment of the second defendant. It is, however, fair to say that counsel for the plaintiffs squarely and frontally put to Ong that

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he was lying when he said that he had on 10 Dec 1984 put the guarantee with the letter on Chua's table.

17 The second defendant told the court that she was operating a mini supermarket. She confirmed that she signed the 1982 guarantee. In 1984 he told Ong that she was resigning as a director of the debtor company and that she did not want to remain as a guarantor for Ong's company. She said her husband, Loon, was to replace her as the guarantor. She saw Loon signing the guarantee at her parents' house. Earlier in her evidence, she said Ong told her sometime in October 1984 that the plaintiffs had agreed to replace her guarantee with Loon's guarantee. She admitted that she and her three sisters owned 40,000 shares in the debtor company but she did not get any benefit. She held the shares as nominee for Ong. She was referred to her affidavit of 12 Feb 1986, which was filed in connection with the plaintiffs' application for summary judgment, in which she gave the impression that she did not see Loon sign the guarantee, she admitted that it should have been; she saw him sign the guarantee. She admitted that she did not check with the plaintiffs about the cancellation of her guarantee.

18 Low Beng Lai gave evidence on behalf of the second defendant, at which time he was a remissier. He said the two accounts of Ong's two companies were substantial for the branch. But they were well secured by mortgages of real properties. He was told of the change of the directors. He said that usually, when there was a change of directors, there would be a change of guarantors also. He added, however, that: "normally, we had to get Singapore main office approval if we wanted to change any guarantor."

19 Chan Kam Foo, an advocate and solicitor, gave evidence. He was practising under the style of Chan & Ling until 19 Nov 1984. The signing of the

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second guarantee took place during this difficult period of his practice. He gave the second guarantee to Ong for him and Loon to sign. He confirmed that he received a copy of the covering letter of 10 Dec 1984 from Ong, i.e. copy of exhibit D1. He did not use the copy at the O.14 stage; he saw exhibit D1 itself "much latter". He was not cross examined on his evidence.

20 The evidence led on behalf of the plaintiffs consisted of Chua's oral evidence and documentary evidence. He was manager of that branch from 1 Aug 1984 to 15 Aug 1988. The account of the debtor company, which was started on 3 Feb 1982, was an overdraft secured by legal mortgage of the 3 office units and the 1982 guarantee signed by Ong and the second defendant. That guarantee was never replaced by any guarantee. He learned of the resignation of the second defendant as director and the appointment of Loon as the new director. He referred the matter to the Singapore Domestic Banking Unit of the plaintiffs, which controlled their branches in Singapore. He was told to get the additional guarantee of Loon. Chua did not say that his communication was oral, which would be surprising, and if they were in writing, the relevant branch and Unit communication was not produced. As additional comfort to the plaintiffs, he wanted Loon to sign as a guarantor. He further stated later that for a non-performing account, by which he meant one that exceeded the limit and payment in reduction was not forthcoming, it was the plaintiffs' policy to require new directors to sign additional guarantees. He admitted that he should not have stated "fresh" guarantee in his letter; what he meant was "additional" guarantee and not a "new" guarantee. On the question as to the plaintiffs' practice regarding the guarantee of a new director of a borrower company, Chua's evidence was not at all clear. In the absence of clear written instructions from the plaintiffs Unit in Singapore or the Head Office, I find that there was really no practice as such.

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21 Chua said that both Ong and Loon were directors of Vincent Ong Pte Ltd and had signed a guarantee for that company's overdraft facilities of $1 million. As both the accounts of that company and the debtor company were in default, he would not have agreed to the replacement of the second defendant as the guarantor by Loon, her husband, who was already bound by one guarantee. The suggestion was that it would not make sense for the plaintiffs to release the wife, knowing that both the accounts were in default. He said he would rigidly follow instructions in matters related to a "problem" account. This assertion of Chua begged the question as to why he did not insist on the return of the guarantee duly signed by Ong and Loon in the presence of lawyers if his version was to be believed. He did not do anything about that guarantee after having sent the original duly completed with the necessary details to the plaintiffs' solicitors to procure the signatures of Ong and Loon. Chua was quite properly asked why Loon was not made to sign alone, if Ong was already bound by the 1982 guarantee. Chua explained that he and Loon were required to sign the new guarantees so that the auditors could see and check one document. If that was so, why were not second defendant, Loon and Ong requested to sign a new guarantee together? For in that case the auditors could conveniently check one document. On Chua's reasoning, if the 1982 guarantee was still subsisting, it would still have to be shown to auditors to support any such assertion in the accounting records of the bank. One could not see the alleged convenience of showing the auditors a guarantee signed by the two current directors.

22 Chua firmly said that he did not receive the guarantee and the covering letter of 10 Dec 1984. He did not see the documents on his table top. In his absence, Ong would not have been allowed to enter his office. By a letter dated 30 May 1986 Loon offered a composition of $100,000 to settle the two suits commenced by the plaintiffs against the two companies and the respective

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guarantors. The plaintiffs did not recognise Loon as the guarantor for the debtor company and proceeded against the second defendant. Chua said he confirmed this to the plaintiffs' solicitors.

23 I find that the 1982 guarantee was replaced by the 1984 guarantee as it was agreed between Ong on behalf of the second defendant and Chua in October or November 1984. Their relationship during the period between August 1984 and December 1984 were very cordial and businesslike; Ong had introduced customers to the branch. Chua admitted to the introduction of one customer and he even visited the factory of that customer with Ong. Both the accounts had exceeded their limits; but I was not satisfied that they were "problem" accounts. They were both at that period well secured by mortgages of office units in two good localities. Chua was not anywhere as distant, officious and businesslike with Ong as he tried to portray the relationship in court. Ong was an important and friendly customer who had easy access to the manager's room; and I find he could wait at the manager's room for the manager to return. Nothing changed and this continued after Chua took over the management of that branch from 1 Aug 1984. It was a branch down the block to customers in the vicinity. Ong's office was across the road. He was not that difficult to get in touch with. He ran a secretarial office and probably he had to be in his office quite often to attend to his clients. All Chua did at the relevant time was to telephone him and finding him unavailable he went on to say that he tried to contact him "daily".

24 In the cross examination of Chua, Chan Kam Foo, who was then counsel for the second defendant, put the suggestion to Chua that Low Beng Lai had agreed to the release of the second defendant and the substitution of Loon and that Chua merely carried this out. This suggestion was not quite consistent with Ong's evidence that his oral agreement was struck directly with Chua sometime

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in October or November 1984. I was left with some doubt whether counsel correctly appreciated the evidence of Ong who had said that he had mentioned the matter to Low Beng Lai who said he saw no problems. That did not amount to an agreement; perhaps this was not correctly apprehended by counsel. At any rate, this was a minor discrepancy. In this connection, I have to say that the case for the second defendant took a while to emerge. But I am satisfied that the evidence was there all the time. Somebody had to marshall them properly; it was not done. Unsatisfactory as this was, it did not detract from the basic and inherent consistency that there was an agreement between Ong and Chua in October and November 1984. I believed Ong and could not accept the evidence of Chua. The replacement guarantee was signed on 9 Dec 1984 by Loon at the house of the parents of the second defendant. On the afternoon of 10 Dec 1984 Ong did deliver the guarantee with the covering letter of that date, of which exhibit D1 was the copy, recording the oral agreement.

25 In the premises, the plaintiffs' claims against the second defendant are dismissed with costs.

Lai Kew Chai J

Sarjit Singh Gill with Gan Kam Yuin (Shook Lin & Bok) for the plaintiffs
Goon Hoong Seng (Low Yeap & Co) for the defendants

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