IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 140

Suit 1736/1998

Between

Stephan Machinery Singapore Pte Ltd

… Plaintiff

And

Oversea-Chinese Banking Corp Ltd

… Defendant

GROUNDS OF DECISION

Banking — Cheques — Forged; Contract — Contractual terms; Contract — Contractual terms

Version No 1: 29 Oct 2026 (23:45 hrs)

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Stephan Machinery Singapore Pte Ltd v Oversea-Chinese Banking Corp Ltd

[1999] SGHC 140

Suit 1736/1998
Lai Kew Chai J
26 May 1999

1 : In this action the plaintiffs claimed against the defendants the sum of $904,398.00 or alternatively damages for negligence. Their case was that by reason of s 24 of the Bills of Exchange Act (Cap 23), they lacked the authority to pay out the said sum from their current account with the defendants in respect of 57 cheques which were drawn against it but which were forged. Alternatively, they asserted that the defendants were negligent for not noticing the uncharacteristic number of cash cheques presented for payment in 1997. In response, the defendants contended that by reason of a clause in the agreement between them the defendants in the events that had happened were contractually precluded from rejecting the conclusiveness of the bank statements and the particulars of their account. They further contended that the plaintiffs` defective system of management and control of the operation of the current account caused their losses. At the conclusion of the trial, I dismissed the claims with costs. I now give my reasons.

2 The plaintiffs are in the business of selling spare parts. The defendants are one of the biggest local banks in Singapore. In 1994 the plaintiffs opened a

current account with the defendants, at their Upper Thomson Branch. Mr Peter Reeg, their managing director, opened the account for the businesses of the plaintiffs. He then had considerable working experience. In establishing the current account, the plaintiffs submitted to the defendants, amongst other documents, a form entitled `Account Application - Business`. The form was completed; the particulars were typed in. Mr Reeg and Mr Lim Tiong Beng, a director, signed the form (exh AB161). They made the following declaration printed on the form:

> *I/We have received and read a copy of the Bank`s Terms and Conditions relating to the Account(s) and I/We jointly and severally agree to abide by and be bound by them and any amendments, alterations and additions thereto as may from time to time be made ...*

3 Clause 13 of the Terms and Conditions for Current Accounts (exh AB 162A) provided as follows:

> *A statement of the customer`s account generated by the Bank`s Computer (bank statement) will be sent to the Customer every month unless there is no transaction during that month. The Customer shall be under a duty to examine the entries in every bank statement and to report immediately to the Bank if there are any errors or discrepancies. If the Customer does not within fourteen days after the date of the bank statement object to any of the matters contained in such statements he shall be deemed conclusively to have accepted all the matters contained in such statement as true and accurate in all respects. Subject to the rights of the Customer to object as aforesaid, the bank statement shall be accepted by the Customer as conclusive evidence of the balance in the account and of the particulars of the account.`*

4 In the pleadings and at the trial, the plaintiffs took the position that they did not admit that a copy of the Terms and Conditions For Current Account was given to them. Mr Reeg in evidence said he did not recall receiving a copy of the Terms and Conditions For Current Accounts. The first time he saw the document was when his solicitor showed it to him, after the action had

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commenced. In his evidence, he observed that both the Application Form and the Terms and Conditions were in `lawyers` English` and he would not have understood them in 10 minutes.

5 Mr Reeg was pressed on these matters in cross-examination. He admitted that he had read the `Account Application - Business` form. He confirmed he could understand the acknowledgement and the agreement to abide by the Terms and Conditions relating to the accounts. He revealed that he had taken away the documents given to him by the defendants and had them completed by either an accounting firm, Deloitte & Touche, who were retained by the plaintiffs` headquarters to assist Mr Reeg, or by a Mrs Reuber, the wife of a friend who assisted him in his early days in Singapore.

6 I concluded that it was impermissible for the plaintiffs to disavow any knowledge of the terms in the Application Form or in the Terms and Conditions relating to the accounts. The signatures of both Mr Reeg and Mr Lim Tiong Beng, the other director of the plaintiffs, bound the plaintiffs to what they had acknowledged and what they had agreed to abide. They did so at the time they opened the current account for the plaintiffs. Mr Reeg came through as very good in his field of work, ie marketing, but he was the sort of person who did not pay sufficient attention to printed words. Though he denied ever receiving and reading the Terms and Conditions, I have to say that I formed the view that he was honestly mistaken over this issue. He must have received it but read them without registering the full effect of the terms. Well, that did not mean that he or the plaintiffs was or were not aware of the Terms and Conditions. There was no evidence from Mr Lim. They were content to sign the acknowledgements of having received and read the Terms and Conditions and the agreement to be bound. The plaintiffs could not be heard to say otherwise.

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7 The defendants sent three bank statements a month to the plaintiffs during 1996 and 1997. The plaintiffs did not report any error or discrepancy. Ms Suzette Koh Mui Ting kept all the bank statements. She was Mr Reeg`s secretary. It was clear from the evidence that Mr Reeg relied on her totally in many administrative matters of the plaintiffs, particularly the operation of the account. He was away from Singapore for long periods of time, as his work entailed him travelling extensively in the region.

8 Unknown to the defendants, the plaintiffs, for the sake of convenience and in view of the overseas business visits of Mr Reeg, had used facsimile signature of Mr Reeg for signing and sending out their quotations to their customers for spare parts. Mr Reeg said that the facsimile signature was not meant to be used for signing cheques. But there was evidence of the fact that the quotations were meant to be taken by their recipients as binding. There were letters even to the defendants, as late as May 1998, which carried the facsimile signature of Mr Reeg. Most importantly, the facsimile signature was applied to cheques to make legitimate payments on behalf of the plaintiffs. These were cheques drawn to pay Singapore Telecoms or rentals payable by the plaintiffs and separately by Mr Reeg to their respective landlords.

9 In fact, the facsimile signature was also used for a `cash` cheque drawn on the account. It was dated 11 September 1997: see exh AB51. Most notable was the fact that part of the proceeds of that cheque was paid separately into Mr Reeg`s personal account which was also maintained with the defendants` same branch. There was no elucidation of the circumstances under which this particular transaction, not connected with any of the 57 forged cheques, had taken place. I did not think, however, that there was anything sinister about it. As regards the other cheques to which the facsimile signature had been mis-

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applied by Ms Suzette Koh, Mr Reeg, in truth and in fact, simply did not bother about these details. As long as the matters were attended to, it was not his concern to check on the details. He did not have that kind of disposition, as it appeared to me. He concentrated on his marketing and he was a broad picture man.

10 That Mr Reeg relied on Ms Suzette Koh heavily and delegated (if not abdicated) the operation of the cheque book to her could be seen synchronically in one incident. It was DW2 Mr Tee Eik Seng`s evidence, which I entirely accept, that on one occasion he called to verify a cheque and was instructed by Mr Reeg to refer to Ms Suzette Koh.

11 The 57 cash and bearer cheques to which the facsimile signature was mis-applied were encashed by Ms Suzette Koh and a Mr Ong Koon Beng. Mr Ong had worked in the plaintiffs` office and had handled transactions of the plaintiffs with the defendants. Mr Reeg said that Ms Suzette Koh introduced him as her husband. They had defrauded the plaintiffs; she was still at large at the time of the trial.

12 The defendants relied on the decision of **Consmat Singapore (Pte) Ltd v Bank of America National Trust & Savings Association** [1992] 2 SLR 828 . Clause 3(c) in that case, leaving aside for the moment the question of its effect, had words substantially similar to cl 13 in the present case, except that it ended with the clause `and except as provided above you shall be free from all claims in respect of the account.` Clause 13 in our case did not have this final clause.

13 LP Thean J, as he then was, stated at pp 834 and 835 as follows:

> *... the first part imposes on a customer a two-fold undertaking and the second part provides for conclusiveness of the account*

> *in the monthly statement. The undertaking is, first, to `verify the correctness of each statement and accompanying cheques or vouchers` received from the bank, and, second, to inform the bank, within seven days of receipt of such statement and accompanying cheques or vouchers, of `any discrepancies, omissions or debits wrongly made to or inaccuracies or incorrect entries in the account` ... An amount drawn by forged or unauthorised cheque which has been debited to the account is `a debit wrongly made` and is also an incorrect entry in the account. In my opinion, under cl 3(c) the customer is under an obligation to notify the bank of a debit arising from a cheque which has been forged or unauthorised and forgery of a signature on a cheque falls within the scope of the first part of cl 3(c). Consequently, if a customer fails to notify the bank within the period prescribed in cl 3(c) of such wrong debit, the statement of account by reason of the second part of cl 3(c) becomes conclusive evidence that the account is and the entries are correct, subject to two exceptions provided therein, and the bank becomes free from all claims in respect of the account.`*

14 On behalf of the plaintiffs learned counsel pointed out that the absence of the embargo against recourse to the bank distinguished ***Consmat`s*** case and was therefore of no assistance to the defendants. I did not think so. The plaintiffs had agreed to the conclusiveness of the bank statements and they would not be allowed to breach their agreement by asserting that the 57 debits were errors and discrepancies. They were contractually precluded from asserting a contrary position.

15 I turn to the claims for damages by reason of the defendants` negligence. It was pointed out that all 57 facsimile signatures were perfectly identical and they, unlike handwritten signatures, left no imprint. The defendants did not notice that it was uncharacteristic for Mr Ong to encash 40 of the 57 cheques and that 41 of the 57 cheques were for sums of at least $10,000. On the evidence, I found that the pattern of drawing cheques was the same for 1996. In any event, it would be unreasonable to require a branch to observe the pattern of encashment when no such observation was practicable. Different counter

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officers attended on each occasion and over the counter transactions were substantial. All 57 cheques were proper on their face. Mr Reeg suggested in evidence that his handwritten signature caused indentations on the specimen card. On his invitation I checked the card and found none. The loss suffered by the plaintiffs was caused by their lack of a system of internal control and Mr Reeg`s complete trust in Ms Suzette Koh which, in the event, turned out to have been misplaced. The plaintiffs therefore were entirely to blame for their own misfortune.

16 **Outcome:**

17 Plaintiffs` claim dismissed.

Lai Kew Chai J

Kenneth Koh (Kenneth Koh & Co) for the plaintiffs
Chelva R Rajah SC and Chew Kei-Jin (Tan Rajah & Cheah) for the defendants

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