Malayan Banking Bhd v Measurex Engineering Pte Ltd and Another
[2001] SGHC 200

Case Number : Suit 412/2000, RA 111/2001

Decision Date : 25 July 2001

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Herman Jeremiah and Joshua Wong (Helen Yeo & Partners) for the plaintiff; G B Vasu (Arthur Loke Bernard Rada & Lee) for the 2nd defendant

Parties : Malayan Banking Bhd — Measurex Engineering Pte Ltd; Measurex Corporation Bhd

JUDGMENT:

1 This is an appeal against the decision of the Deputy Registrar granting the Plaintiff ("the Bank") summary judgment in the sums of US$3,102,254.71 and $1,990,311.67 plus interest and cost against the 2nd Defendant ("Measurex"). On 29 June 2001, after hearing counsel for the parties, I allowed the appeal in part by reducing the judgment sums to US$3,100,937.72 and $1,957,756.05 plus interest, with unconditional leave to defend in respect of US$1,316.99 and $32,555.62. The cost of the appeal was to be in the cause. Measurex has since appealed against my order for judgment in the new sums and I now give my grounds in writing.

2 The Bank's action is based on a loan contract ("the Contract") dated 14 May 1997 with the 1st Defendant in respect of which Measurex is the guarantor. On 6 April 2000 the Bank terminated the Contract and in accordance with its terms, all sums outstanding became immediately due and payable. The 1st Defendant and Measurex failed to pay such sums despite letters of demand by the Bank in May 2000 and this writ was taken out on 21 December 2000.

3 At the first hearing of this appeal on 14 June 2001, counsel for Measurex, Mr Vasu said that Measurex did not dispute the principal sums owed nor the monthly interest imposed on such principal. However the Bank had capitalised the monthly interest in its computation of the interest element of its claim. This meant that the Bank's claim is for compound interest. As there was no express provision in the Contract giving the Bank the right to charge compound interest, Mr Vasu submitted that Measurex should be given unconditional leave to defend the action.

4 For the Bank, Mr Jeremiah conceded that there was no express term in the Contract on compound interest but submitted that it was an implied term. The difficulty with this submission is that the onus would be on the Bank to prove the existence of such an implied term and in the circumstances it would be appropriate to give unconditional leave to defend in respect of the compound interest component of the sums claimed. However I saw no reason to also give leave to defend in respect of the principal and the simple interest and neither was Mr Vasu able to suggest any. In the circumstances I allowed the appeal in part and granted Measurex unconditional leave to defend the compound interest component of the sums claimed. However Mr Jeremiah was unable to provide a figure for this sum at the time and I adjourned the hearing to 29 June 2000 for the parties to file affidavits in respect of the quantum of compound interest.

5 In the event, the Bank filed a further affidavit on 28 June but Measurex did not file any affidavit. At the adjourned hearing on 29 June, Mr Vasu asked for a further adjournment to consider the Bank's further affidavit. However he was not able to provide any good reason for the adjournment and I disallowed his application. In the further affidavit, the Bank's representative exhibited several schedules showing the computation for each facility on the basis of simple interest and compound

interest. From that affidavit it would appear that based on simple interest, the judgment sums would amount to US$3,100,937.72 and $1,957,756.05. Mr Vasu was unable to dispute this computation. However he cited *Ngai Heng Book Binder Pte Ltd v Syntax Computer Pte Ltd* [1988] SLR 36 to support his argument that because Measurex disputed the sum, leave to defend ought to be given.

6 In my view the *Ngai HengBook Binder* case is entirely different from the present one. I only need to reproduce the headnote of the report, which is as follows:

> "**Held, allowing the appeal**: As the affidavits and defence filed raised questions of fact and law, interlocutory judgment with damages to be assessed was not the proper order to make. Such an order should only be given in a case where unliquidated damages were claimed and the defendant failed to establish a right to defend. The present action concerned a specific sum and as that was seriously disputed by the defendants and summary judgment may not be entered for the sum claimed or part thereof, leave to defend should have been given."

7 In the present case there is not only no serious dispute, but absolutely no dispute in respect of the principal owed. There is also no dispute that the Bank has the right to charge simple interest. The dispute is only in respect of the right claimed by the Bank to charge compound interest. That element has been removed from the judgment given by me on appeal. Measurex has been granted unconditional leave to defend in that respect. Therefore there is absolutely no merit in Mr Vasu's submission that unconditional leave to defend ought to be given for the entire sum claimed.

Sgd:

LEE SEIU KIN
JUDICIAL COMMISSIONER

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