Hong Guet Eng v Wu Wai Hong (liquidator of Xiang Man Lou Food Court Pte Ltd) [2006] SGHC 42

Case Number : OS 1534/2005

Decision Date : 15 March 2006

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong J

Counsel Name(s) : Mak Kok Weng (Mak & Partners) for the plaintiff; Christopher Tan Ming Tatt (Lee & Tan) for the defendant

Parties : Hong Guet Eng — Wu Wai Hong (liquidator of Xiang Man Lou Food Court Pte Ltd)

Limitation of Actions – Particular causes of action – Contract – Plaintiff's alleged loan to company unaccompanied by any terms or conditions – Plaintiff filing proof of debt with liquidator of company upon company's voluntary winding up over 20 years later – Whether plaintiff's claim time-barred under s 6 Limitation Act – Section 6 Limitation Act (Cap 163, 1996 Rev Ed)

Statutory Interpretation – Construction of statute – Section 6 Limitation Act providing for applicable time-bar with regards to claims under contract – Whether s 6 applicable to family and friendly loans – Whether legislative intent to exempt family and friendly loans from application of s 6 existing – Section 6 Limitation Act (Cap 163, 1996 Rev Ed)

15 March 2006

Andrew Phang Boon Leong J:

Introduction

1 The present proceedings raise two points of general importance. The first relates to the possible need for reform of our Limitation Act (Cap 163, 1996 Ed) in so far as (in particular) friendly loans are concerned.

2 The second is more general and is a timely reminder that, in the quest for justice, existing legal principles must be respected. In particular, where the application of a statutory provision in the context of established and existing legal principles is clear, the courts cannot ignore it. The courts cannot, under such circumstances, "invent" a means of evading the statute. Still less can the courts "invent" a means that is itself not only inconsistent with existing legal principles but is also incapable of being independently justified. All this is both logical and commonsensical, and is virtually always confirmed or clinched by the legal coherence underlying the statutory provision and legal principles concerned.

3 Before elaborating on these two points, it would be appropriate to set out, in brief, the factual background in the present proceedings.

4 The plaintiff's case was that she was a shareholder of a company and had made two loans to the company on 8 March 1985 and 29 May 1985 for the sums of $61,500 and $20,000, respectively. She further claimed that the company had issued two receipts, one for each loan. It is significant to note that there were *no conditions or terms whatsoever accompanying this alleged loan.* This is significant because this would mean that the time under the Limitation Act would begin to run from the very date of the loans themselves. There was also no basis on which the plaintiff could have argued that it was a pre-condition of the loans that the obligation to repay the loans would only run from the time of the making of a demand or on a future date. Indeed, this would probably have been so even if there were a simple "on demand" provision without more, unless the contrary could

somehow be inferred from the terms of the loans themselves (see, for example, the English Court of Appeal decision of *Von Goetz v Rogers* [1998] EWCA Civ 1328 at [19]; the English High Court decision of *Re Westminster Property Management Ltd* [2002] EWHC 52 (Ch) at [43]; as well as the oft-cited observation by Chitty J in the older English High Court decision of *In re J Brown's Estate* [1893] 2 Ch 300 at 304–305). Indeed, Waite LJ, in the English Court of Appeal decision of *Boot v Boot* (1997) 73 P & CR 137, observed thus (at 138):

> There is a principle of common law, well established by authority although its logic may not be immediately apparent to a layman, that a contract of loan under which the money lent is expressed to become repayable to the lender on demand imposes an immediate obligation of repayment upon the borrower from the outset of the loan, regardless of whether any demand for payment is made or not.

It bears repeating that this was clearly a situation where there was not even an "on demand" provision present to begin with.

5 The company was wound up voluntarily on 12 July 2005 and the defendant was appointed its liquidator.

6 The plaintiff then lodged proof of debt with the defendant. However, the defendant rejected her claim. The defendant alleged, first, that the plaintiff's husband was a signatory to the statutory declaration of solvency which was annexed to a list of the company's assets and liabilities and that the loans were not reflected in this list.

7 The defendant also stated that the accounting records in his possession did not disclose the alleged loans to the company. In a related vein, counsel for the defendant also argued that some directors and shareholders of the company had told him that the company did not owe the plaintiff any money and that, if it did, the money had already been repaid to her. Counsel for the plaintiff raised, not surprisingly in my view, the objection of hearsay, but I did not need to rule further on this particular point for (as we shall see) the issue of limitation raised an insuperable obstacle to the plaintiff's application in the present proceedings.

8 Finally, and most importantly, the defendant stated that the alleged loans were time-barred as the loan had been made more than 20 years ago.

9 The present proceedings were initiated by the plaintiff in order to seek an order of court to reverse this decision by the defendant.

10 The defendant raised various arguments, which have been described in the briefest of fashions above, against the plaintiff's application.

11 In my view, however, the defendant's final argument, centring on limitation, was the most compelling. If the plaintiff's claim was indeed time-barred, that would have been the end of the matter. Indeed, I held that this was in fact so and dismissed the plaintiff's application.

12 Not surprisingly, perhaps, counsel for the plaintiff argued vigorously that his client's action was not time-barred. He argued, in particular, that the relevant law had in fact been amended in England and provided, in what is now s 6 of the UK Limitation Act 1980 (c 58) ("the UK Act"), that loans such as those in the present proceedings would not be time-barred. This particular (UK) provision is in fact reproduced at [21] below. The crucial issue, as we shall see, is whether or not the English position represents, in fact, the present Singapore position as well.

13 Counsel for the plaintiff also relied on the Singapore High Court decision of *Tang Boon Loong v Chin Mui Lan* [1994] SGHC 48 – in particular, on the concluding part of the judgment. I will have occasion to return to this decision later.

14 I should add that counsel for the plaintiff also attempted to rely on s 4 of our Limitation Act, arguing that the defence of limitation under this Act had not been "expressly pleaded as a defence thereto in any case where under any written law relating to civil procedure for the time being in force such a defence is required to be so pleaded". He also referred, in this regard, to various provisions in the Rules of Court (Cap 322, R 5, 2004 Rev Ed). I did not, with respect, find this particular argument at all persuasive – if nothing else, because the present proceedings were quite different in nature, and did not, *inter alia*, involve any pleadings as such. However, even if the plaintiff could proffer such an argument (which seemed to me, as just mentioned, untenable in any event), I would have been prepared to allow the defendant to amend his pleadings. Indeed, I asked counsel for the defendant whether he would like to do so, on the assumption that counsel for the plaintiff's argument was correct in the first instance and he answered in the affirmative – albeit not without some puzzlement for the reasons just stated.

Issues arising in the context of the Limitation Act

Legislative reform in other jurisdictions (with a focus on the UK context) and its potential impact in the Singapore context

15 I begin with what seems to be a self-evident proposition, having regard to the factual matrix of the present proceedings which I have set out briefly above. The plaintiff's claim, based as it was on a contract, was clearly time-barred by virtue of s 6(1) of our Limitation Act. The material part of s 6(1) itself reads as follows:

> **Limitation of actions of contract and tort and certain other actions.**
>
> **6.**—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (a) actions founded on a contract or on tort;
>
> …

16 It should be noted that our Limitation Act is based on the UK Act. *However*, the *latter* was *expressly amended* in the context of, *inter alia*, friendly loans as a result of the UK Law Reform Committee's recommendation in *Law Reform Committee, Twenty-First Report (Final Report on Limitation of Actions)* (Cmnd 6923, September 1977) ("the UK Report"). In the UK Report, the UK Law Reform Committee first reviewed – in a helpful and succinct manner, in my view – the then existing law in the area. I can do no better than to set out their views on the then existing state of the law, as follows (at paras 3.20–3.21):

> 3.20 This particular defect [in the law] is caused by the rule that where no time is specified in a contract of loan, or where the loan is expressed simply to be repayable "on demand", time starts to run in favour of the borrower from the date of the loan. Although the precise scope of this rule may be open to some doubt, it has been applied in a number of cases and was treated as well settled as respects promissory notes and other straight-forward loans by the end of the 19th Century. The principle underlying this rule appears to be that the cause of action accrues from the first moment the lender could have taken steps to claim the money.

> 3.21 Although the courts have declined to apply a similar rule to a guarantee and have shown themselves in more recent cases disposed to treat the question whether a demand is a prerequisite to the accrual of the cause of action as being a genuine question of construction, nevertheless it seems that a loan made without any express provision as to repayment, or expressed to be repayable simply "on demand" without any further qualification, is still likely to be treated as giving rise to a cause of action forthwith, with the result that the Limitation Act can be successfully pleaded to a claim made more than six years from the date of the loan.

17 The Committee then proceeded to outline the main reason why injustice would result, especially in the *non*-commercial context, as follows (at para 3.22 of the UK Report):

> 3.20 It has been represented to us that, *although this rule probably causes little injustice in the case of commercial loans, it can cause real hardship where the loan is made between friends or members of the same family*. It is *by no means uncommon for* money to be lent in these circumstances without any written contract and without any legal advice having been obtained, on the tacit understanding that the borrower will not be expected to repay the money until it is asked for. *However, as the law appears to stand, once the loan has been outstanding for more than six years (which not infrequently happens), the borrower has a complete defence to the claim, notwithstanding that it is perfectly well known "in the family" that the money was lent and not given and was never expected to be repaid before demand*. [emphasis added]

18 In a similar vein, the New South Wales Law Reform Commission ("the NSW Commission"), in its more recent report entitled *Time limits on loans payable on demand* (Report 105, October 2004) ("the NSW Report"), observed thus (at para 2.3):

> 2.3 The expectations of the parties do not change where the lender requests repayment of the loan more than six years after the date at which the borrower received the money under the loan. The Commission is of the view that, to the extent to which the parties can be taken to have thought of time limits when making their contract, and remembering that they are unlikely to have the benefit of legal advice in such informal circumstances, they would not expect that the mere lapse of six years (or any other time) from the date of receipt of the loan would defeat the claim. At most, they would expect a limitation period (of whatever duration) to run from the date of the demand for repayment. The effect of the present law is thus to allow a borrower who pleads the Statute of Limitations to defeat the intention of the parties at the time of entering into the contract that the loan would be payable on demand. In the case of loans between family members and friends, this seems unfair.

The leading New South Wales decision cited by the NSW Commission is *Woodward v McGregor* [2003] NSWSC 672, wherein Master McLaughlin in fact referred to both the UK Report ([16] *supra*) as well as s 6 of the UK Act (reproduced below at [21]).

19 Not surprisingly, the UK Law Reform Committee recommended that the law be amended – in particular, that "where money is lent and no date specified for its repayment, then, for the purpose of limitation, time should not begin to run in favour of the borrower until the date on which a written demand for repayment is first made" (see para 3.26 of the UK Report).

20 The NSW Commission also advocated reform and it is understood that, the NSW Report ([18] *supra*) having been issued relatively recently, the process is still ongoing. Interestingly, the NSW Commission also considered possible objections against reform, centring on the possible destruction of proof of payment and the possible element of vindictiveness in reviving long dormant claims (see paras 2.5 and 2.6, respectively, of the NSW Report). However, it rejected both objections. The first

was held to be merely an evidential point and that "[i]n any event, records of the movement of sums of money will usually be retained in some form by financial institutions" (see para 2.5). In so far as the second objection was concerned, it was considered "that the motive for demanding repayment of a debt cannot qualify the intention with which the loan was entered into in the first place" (see para 2.6). However, the Commission did consider more *general* dangers in changing the current law, but found that they did not constitute persuasive objections against reform (see generally paras 2.7–2.10).

21 As already alluded to above, concrete legislative reform ensued in the *UK* context. The UK Parliament, implementing most of the recommendations contained in the UK Report (including the one presently considered), introduced the salient amendment via s 1 of the Limitation Amendment Act 1980 (c 24) (albeit not, as we shall see, to the full extent envisaged by the UK Law Reform Committee at [19] above). More specifically, the said amendment is now embodied in a new provision, *viz*, s 6 of the UK Act ([12] *supra*), which is reproduced as follows (together, for the purposes of context, with s 5, which is the analogue of s 6 of the Singapore Limitation Act):

> **5 Time limit for actions founded on simple contract**
>
> An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.
>
> **6 Special time limit for actions in respect of certain loans**
>
> (1) Subject to subsection (3) below, section 5 of this Act shall not bar the right of action on a contract of loan to which this section applies.
>
> (2) This section applies to any contract of loan which—
>
> (a) does not provide for repayment of the debt on or before a fixed or determinable date; and
>
> (b) does not effectively (whether or not it purports to do so) make the obligation to repay the debt conditional on a demand for repayment made by or on behalf of the creditor or on any other matter;
>
> except where in connection with taking the loan the debtor enters into any collateral obligation to pay the amount of the debt or any part of it (as, for example, by delivering a promissory note as security for the debt) on terms which would exclude the application of this section to the contract of loan if they applied directly to repayment of the debt.
>
> (3) Where a demand in writing for repayment of the debt under a contract of loan to which this section applies is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one of them) section 5 of this Act shall thereupon apply as if the cause of action to recover the debt had accrued on the date on which the demand was made.
>
> (4) In this section "promissory note" has the same meaning as in the Bills of Exchange Act 1882.

22 The relevant legislative history leading up to the enactment of s 6 of the UK Act is instructive and confirms, *inter alia*, the pivotal role of the UK Law Reform Committee, as noted above.

23 As alluded to in the preceding paragraph, the passage of the bill through both the House of Commons and the House of Lords is instructive (and where, not surprisingly, the UK Law Reform Committee's recommendations (considered above) were referred to by both Houses of Parliament as being the origin and catalyst of the bill itself).

24 At the House of Lords stage during the second reading of the bill, the then Lord Chancellor, Lord Hailsham of Saint Marylebone, observed thus (see *The Parliamentary Debates (Hansard) – House of Lords* (25 June 1979) vol 400 at col 1218):

> Clause 1 of the Bill [which introduced the present s 6 of the UK Act that is reproduced at [21] above] *remedies what has for long been considered a minor injustice in the present law.* Under the law as it stands, where a loan is made repayable on demand or without a specified time for repayment, the time of limitation begins to run from the making of the loan. That discourages indulgence on the part of the creditor. In future, if Clause 1 is passed, time will only begin to run against the creditor from the presentation of a written demand. [emphasis added]

25 At the House of Commons stage during the second reading of the bill, the then Solicitor-General, Sir Ian Percival, observed thus (see *Parliamentary Debates (Hansard) – House of Commons* (29 October 1979) vol 972 at col 780):

> Clause 1 [which introduced the present s 6 of the UK Act 1980 that is reproduced at [21] above] deals with the difficulty that has arisen in the law relating to loans — *typically loans between members of a family or friends*. The present law in England and Wales is that if the parties to a loan agree that the borrower is to pay the money back when he is in a position to do so, the debt is nevertheless treated as one which can be recovered immediately.
>
> *The lender's cause of action accrues at the time when the loan is made, and the operation of the present law of limitation is such that he will lose his right to recover his money six years later*. If, for example, an aunt lends money to a nephew and leaves the loan outstanding for six years, her right to recover it will have vanished completely.
>
> *The effect of clause 1 is that time would not begin to run against the aunt until she had made a written demand to her nephew asking for repayment. That is a solution which seems more appropriate to relatively informal arrangements of the sort that prevail in some family circumstances*.
>
> [emphasis added]

26 The parliamentary extract just cited is more specific (and, to that extent, more helpful) inasmuch as it refers directly to the particular difficulties centring around *family or friendly* loans (see also the UK Law Reform Committee's views at [17] above). This is a significant point, to which I shall return later.

27 The subsequent English *case law* also underscores both the nature as well as the importance of this particular reform.

28 Many of these decisions have, in fact, already been referred to (albeit in passing) above (see generally, [4] above). However, foremost amongst the various decisions is that of the English Court of Appeal in *Boot v Boot* ([4] *supra*). This case confirms the background leading to the enactment of s 6 of the UK Act: see especially at 138–139. As Waite LJ quite pertinently pointed out, s 6 did not, however, adopt the UK Law Reform Committee's recommendation (at [19] above) to the effect that

there be a total abrogation of the existing common law rule altogether. In the words of the learned judge (at 139):

> The draftsman of the [UK] Limitation Act 1980 clearly thought that [*ie*, complete abrogation of the existing common law rule] would be too extreme a step, and decided instead to give effect to the spirit of the recommendation by preserving the rule but modifying its effect.

Unfortunately, this gave rise to a number of problems of interpretation which I will touch on briefly below (see generally [33]–[35] below). Nevertheless, one ought to note the excellent exposition of the effect of, as well as approach towards, s 6 by Waite LJ (at 139–140).

29 What is utterly crucial not only in the context of the present proceedings but also in relation to the law relating to limitation of actions generally in so far as Singapore is concerned can be simply put: *The Singapore Limitation Act was never amended in the manner the UK Act was and, hence, the pre-existing law, which subjects, inter alia, friendly loans to the strictures of s 6 of the Singapore Act, continues to apply in the local context*. One may view this as unfortunate. It is my own view that the Singapore Parliament ought to consider seriously whether or not our own Act should be amended to incorporate a provision similar to s 6 of the UK Act (as set out at [21] above). I should hasten to add that this suggestion for reform is by no means new. Indeed, in the Singapore High Court decision of *Tay Ivy v Tay Joyce* [1992] 1 SLR 893 at 901, [23], Michael Hwang JC made precisely the same suggestion, albeit in a much briefer manner than I have done in the present judgment.

30 I find the rationale for amendment, as set out, *inter alia*, by the UK Law Reform Committee above, both principled and persuasive. The reasoning it adopted transcends national borders inasmuch as it is, *inter alia*, infused with ideas of general justice and fairness. There is therefore no reason why an amendment along similar, if not identical, lines ought not to be adopted in the Singapore context. Interestingly, the more recent Report by the UK Law Commission entitled *Limitation of Actions* (Law Com No 270, 2001) did not recommend any substantive change to the regime encompassed under s 6 of the UK Act (see generally at paras 4.4–4.6). This Report was, in fact, concerned with a holistic reform of the law of limitation in the UK context. Such reform is, of course, outside the purview of the present proceedings, which are concerned with a far more specific issue only.

31 However, all this being said, the Singapore Legislature might well consider a *modified* version of the UK provision. This is because at least three possible difficulties do, in fact, present themselves as a result of s 6 of the UK Act, although only one can be met clearly via legislative drafting.

32 The first difficulty is that it might be argued that there is a presumption that in a *domestic* context there is no intention to create legal relations: see, for example, the oft-cited English Court of Appeal decision of *Balfour v Balfour* [1919] 2 KB 571 (see also Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 4th Ed, 2002) at para 10.030 as well as David W Oughton, John P Lowry & Robert M Merkin, *Limitation of Actions* (LLP, 1998) at p 135, n 65). This would have a significant potential impact in the context of *friendly or family* loans. Such a presumption can, of course, be rebutted on the facts but if it is not, then the borrower would be able to avoid legal liability altogether without even having to invoke the defence of limitation. In the circumstances, as this particular issue lies in the sphere of the common law, the Legislature might have little choice but to avoid dealing with it altogether.

33 The second difficulty is this: The present language of s 6 of the UK Act (set out at [21] above) could, at least arguably, encompass both commercial *as well as* non-commercial situations. This appears to be the view taken, for example, by Ferris J in *Re Westminster Property Management*

Ltd ([4] *supra* at [48]; *cf* also the English Court of Appeal decision of *v Bank of Baroda v A S A A Mahomed* [1999] Lloyd's Rep Bank 14, although one writer opines that commercial loans would generally be worded in such a manner that they would probably fall outside the purview of the section (see McGee ([32] *supra*) at para 10.030). As we have seen, the principal concern of s 6 of the UK Act was really with non-commercial, as opposed to commercial, situations (see, especially, at [17] and [26] above). The issue that arises is whether or not, should a legislative amendment be effected to the Singapore Limitation Act, that amendment should be worded so as to cover both commercial and non-commercial situations, or only non-commercial situations. That is, of course, a question of legislative policy that is outside the purview of the courts.

34 A third possible difficulty centres on whether or not ss 6(2)(a) and 6(2)(b) of the UK Act are *conjunctive or disjunctive*. A conjunctive approach appears to be suggested by a literal reading of s 6(2) (and see Oughton, Lowry & Merkin ([32] *supra*) at p 135). Nevertheless, it might be argued that "[t]here are policy reasons which could be taken to suggest that the two elements of s 6(2) should be regarded as alternative qualifying grounds" (see Oughton, Lowry & Merkin, *ibid*). Once again, a question of legislative policy arises – a question which is, in fact, neatly encapsulated within the view expressed by the learned authors concerned in the preceding sentence. I do note, however, that these authors do proceed to observe thus (at p 136):

> Unfortunately, the drafting of section 6 is ambiguous and probably fails to give effect to the intensions of the Law Reform Committee, but as it stands, it is suggested that the literal interpretation must be given to the words of section 6(2).

35 On a more *general* level, however, the same authors also observe (*ibid*) that:

> An unfortunate effect of the combined provisions of section 6(2) is that of lack of clarity, and there is every likelihood that they may be misinterpreted, because within the single subsection there is to be found an exception, an exclusion and a deeming provision, all of which are capable of being confused.

Indeed, it was precisely this effect that confused the judge at first instance in *Boot v Boot* ([4] *supra*), whose decision had therefore to be reversed by the Court of Appeal. And, in the English Court of Appeal decision of *Von Goetz v Rogers* ([4] *supra* at [8]), Potter LJ observed (after quoting s 6) that "[t]his is an elaborate condition, by no means easy to elucidate". Indeed, it is my view that s 6(2) of the UK Act could have been more felicitously worded. It is hoped that the Singapore legislature will note these difficulties and potential pitfalls should legislative reform be effected and enact an improved version of the UK provision. In this last-mentioned regard, the NSW Commission recently proposed amendments in its Report, which was briefly considered above (at [18]). It may not be inappropriate, given the relatively recent vintage of the NSW Report itself, to set out the following "Summary of Recommendations" (at p vii):

> **Recommendation 1: see page 10**
>
> The *Limitation Act 1969* (NSW) should be amended to provide that the limitation period for a loan payable on demand should run from the date on which demand is first made for repayment. This provision should not affect the accrual of the cause of action.
>
> **Recommendation 2: see page 11**
>
> The limitation period for loans payable on demand should be three years after the demand has been made.

Recommendation 3: see page 12

The ultimate bar for loans payable on demand should apply 30 years from the date the loan was made.

Recommendation 4: see page 13

A demand for repayment of a loan payable on demand need not be in writing before the limitation period can begin to run.

Recommendation 5: see page 14

"Demand" should be defined to mean an unconditional demand for immediate payment, including a demand that allows the borrower a reasonable time to arrange payment.

Recommendation 6: see page 14

A demand for part only of the loan should not have the effect of barring future demands in respect of the balance of the loan.

Recommendation 7: see page 16

For the purposes of determining whether or not the loan is payable on demand, the terms of a collateral obligation to pay the amount of the debt or any part of it should be read into the terms of the loan agreement itself and, to the extent of any inconsistency between the terms, prevail over them.

36 However, this is *not* the *only* alternative approach. In this regard, the NSW Commission also referred (apart from the actual reforms in the UK) to proposals in *other jurisdictions*: see para 3.4. Indeed, whether there should be reform and (if so) what form such reform should take, entail, in the final analysis, questions and issues of legislative policy that are within the sole province of the Singapore Legislature.

Implications for the present proceedings

37 Returning to the facts of the present proceedings, it is no surprise, therefore, that counsel for the plaintiff continuously emphasised the unfairness that would result to his client if her application were dismissed. However, for reasons that I will elaborate upon below, I am of the view that, on the *specific facts of the present case*, this argument from unfairness was not as powerful or persuasive as counsel for the plaintiff had made it out to be. Nevertheless, on a point of *general* principle, I do nevertheless agree (and have in fact pointed out earlier in this judgment) that the Singapore Parliament might like to consider possible reform of our own Limitation Act.

38 What *is* clear is that I am bound to observe and apply the law as it presently exists. Counsel for the plaintiff repeatedly urged me to adopt the present English position. I found that, with respect, to be utterly untenable. As we have seen, the UK Act was *expressly amended*. Unfortunately, the Singapore Limitation Act was *not* amended in a similar fashion. What counsel for the plaintiff was, *in effect*, asking me to do was to become a "mini-legislature" and amend *statutory* law by way of *judicial fiat*. A moment's reflection will reveal that such an approach is wholly arbitrary and unconstitutional. It has often been said that hard cases make bad law. If I had acceded to counsel

for the plaintiff's request, I would have made not merely bad law but would also have actually crossed over into what is the very antithesis of the law itself. Although Lord Denning MR was mentioned (albeit generally and in passing) by counsel for the plaintiff, that learned judge's passion for justice had never, as far as I know, resulted in the *blatant* refusal to apply a clear statutory provision in the context of equally clear and established legal principles. That would have been both unconstitutional and (if I may say so) simply unlawful. In fairness, I should add that counsel for the plaintiff was not consciously urging me to do this. However, in his overzealousness and enthusiasm for his client (whom he genuinely believed would otherwise be deprived of a just result), he (unfortunately) failed to notice the *substance as well as implications* of what he was suggesting. Therefore, whilst his commitment to his client's case was commendable, the actual content of his argument was, with respect, misconceived.

39 Besides, as I have already alluded to above, the injustice in these proceedings may well be more apparent than real. At the very least, there was as much to be said on behalf of the defendant as there was for the plaintiff based on the *specific factual matrix* of the present case. Hence, the present case is by no means a paradigm model that highlights the injustice surrounding the application of s 6 of our Limitation Act to friendly loans. Put another way, and in relation to the maxim considered in the preceding paragraph, this was *not* a *clear-cut* example of a hard case in the first instance.

The argument from public policy

40 However, counsel for the plaintiff had a second (and related) legal string to his bow. In this regard, he relied upon the following passage towards the end of K S Rajah JC's decision in the Singapore High Court decision of *Tang Boon Loong v Chin Mui Lan* ([13] *supra*). By way of a preliminary snapshot of the argument proffered, counsel for the plaintiff was, in effect, utilising *an extremely broad and sketchy argument from public policy* to argue that I should *ignore* what I have already held to be a clear *statutory* provision in the context of established legal principles. As I shall point out in a moment, this was not, in any event, what the learned judge was doing in the case just cited.

41 Turning to the decision of *Tang Boon Loong v Chin Mui Lan* itself, the crucial passage in the judgment (at [52]) reads as follows:

> I should, however, like to join forces with the observations made by Michael Hwang JC in *Tay Ivy v Tay Joyce* at page 901. Action should be taken to redress the wrong that would be done when loans are given to friends and relatives without any express terms or with loose terms as to when repayment should be made. Where money is borrowed for a special need or on an urgent occasion, the payor accepts a statement which amounts to no more than "payable when able". It is unfair and it is difficult to believe that Parliament intended friendly and family loans to be as formal as business contracts or that moneys borrowed on such occasions need not be repaid because ties of friendship or of blood resulted in time being given for repayment and lame excuses accepted in the interests of friendship and family.

42 A close reading of the learned judge's decision would, in my view, reveal that he did not go as far as counsel for the plaintiff would have had me believe. Indeed, it would appear that Rajah JC did find that s 6 of the Limitation Act *did not apply* on the facts of that particular case. The passage quoted in the preceding paragraph was therefore merely an endorsement, as well as a reiteration, of Hwang JC's suggestion for reform in *Tay Ivy v Tay Joyce* which I have in fact already referred to above (at [29]), and which I also endorse. Looked at in this light, therefore, it was clear that Rajah JC was not advocating a broad public policy argument, on which counsel for the plaintiff was relying. However, since this particular argument was raised and (in turn) raises issues with regard to

the very nature and functions of the courts themselves, I will deal with it briefly although it cannot, as I have just pointed out, be premised on the passage of the judgment in *Tang Boon Loong v Chin Mui Lan* cited at [41] above.

43 It is indeed the first task of any court to ensure that a just and fair result is arrived at. However, this must be in accordance with the prevailing law. In other words, achieving a just and fair result in a particular case does not justify either the blatant or (worse still) subtle disregard of existing legal principles – especially when (as in the present proceedings) those legal principles are applied to clear statutory language.

44 Although I am in full sympathy with the view of counsel for the plaintiff, I must, with respect, differ from his view to the effect that the local Legislature intended that friendly and family loans be exempted from the provisions of the Limitation Act. Indeed, as we have seen, that was also once the situation in England (and upon whose legislation our own legislation, it should be reiterated, was based). This was why *legislative amendment* was required in the UK. In the circumstances, that would need to be the case in Singapore as well.

45 Absent a legislative basis, counsel for the plaintiff's view (as briefly set out in the preceding paragraph) would appear to be based on a general concept of public policy instead. With the greatest respect, I know of no legal doctrine which is so wide and abstract. In the circumstances, I had, despite the vigorous attempts by counsel for the plaintiff to the contrary, to reject his arguments that were based, in the final analysis, on such a broad doctrine.

Conclusion

46 With respect, the courts do not administer "palm tree justice", which is arbitrary and subjective and, hence, the very antithesis of the enterprise of the law itself. In stating this, I am reminded of the celebrated words uttered by Lord Eldon LC in *Gee v Pritchard* (1818) 2 Swans 402 at 414; 36 ER 670 at 674, as follows:

> The doctrines of this Court ought to be as well settled and made as uniform almost as those of the common law, laying down fixed principles, but taking care that they are to be applied according to the circumstances of each case. I cannot agree that the doctrines of this Court are to be changed with every succeeding judge. Nothing would inflict upon me greater pain, in quitting this place, than the recollection that I had done any thing to justify the reproach that the equity of this Court varies like the Chancellor's foot.

The footnote following the passage just quoted is also instructive, as it gives the source (from John Selden) of the reference to the concept of the danger of the equity of the court varying like the Chancellor's foot; it reads as follows (at 427; 679):

> "Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one, as if they should make his foot the standard for the measure we call a Chancellor's foot; what an uncertain measure this would be! One Chancellor has a long foot, another a short foot, a third an indifferent foot; 'tis the same thing in the Chancellor's conscience." *Selden*, Table Talk.

47 Justice is – and ought to be – administered in accordance with the prevailing law. There may be some scope for manoeuvre if the prevailing law is unclear or ambiguous, and might result in substantive injustice. But there are limits to such flexibility. Where, as in the present proceedings, the law is clear, the court has no choice but to apply it.

48 If to achieve justice in a given case would open the floodgates to chaos and (ironically) consequent injustice in *other* cases, the path the court must take is clear. In any event, as I have already pointed out, this is by no means a clear-cut instance of a hard case. In other words, it is by no means clear that injustice would clearly have resulted to the plaintiff in the instant proceedings.

49 What is clear is that this is an eminently appropriate occasion to suggest legal (here, legislative) reform. I have, in fact, already touched on this in an earlier part of this judgment (see especially [29]–[36] above). Should such reform ultimately come to pass, that would ensure that justice and fairness result – not merely on a micro or specific level but, rather, on a macro or universal level as well. To this end, it is hoped that the relevant authorities will at least consider seriously the possibility of legislative reform in this particular instance, bearing in mind – and this is an important point – the possible pitfalls that may occur and modifying any proposed legislation accordingly.

50 In the circumstances, the plaintiff's application is dismissed.

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