IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 96

HC/Suit No 995 of 2016
(HC/RA 42 of 2018)

Between

SME Care Pte Ltd

… Plaintiff

And

Jannie Chan Siew Lee

… Defendant

JUDGMENT

[Civil procedure] — [judgments and orders]

SME Care Pte Ltd
v
Chan Siew Lee Jannie

[2018] SGHC 96

High Court — HC/Suit No 995 of 2016 (HC/Registrar's Appeal No 42 of 2018)
Choo Han Teck J
16 April 2018

24 April 2018 Judgment reserved.

Choo Han Teck J:

1 SME Care Pte Ltd ("the plaintiff") is a licensed moneylender. The plaintiff granted a loan facility to JASC Pte Ltd ("JASC") by a letter dated 29 July 2012. The total amount borrowed under that facility was $500,000. A couple of years passed and JASC found itself unable to repay the debt, which had increased immensely by that time from the interests accrued. The loans were secured by a mortgage of two properties owned by JASC, as well as a personal guarantee by Jannie Chan Siew Lee ("the defendant").

2 JASC is a company wholly owned by the defendant who is also its controlling director. On 5 September 2014 JASC applied to the court by an originating summons (Originating Summons No 850 of 2014) under the Moneylenders Act (Cap 188, 2010 Rev Ed) to set aside the loans, or, alternatively, for the court to revise the interest rate.

3 The originating summons was heard before Justice Chua Lee Ming who dismissed the application to set aside the loan agreement, but revised the interest rate on the loan facility and the rate for late payment from 7% to 5.2% per month. Fresh demands for payment were made by the plaintiff but neither JASC nor the defendant paid up. Consequently, the plaintiff, by this action in Suit No 995 of 2016, sued the defendant as the guarantor for payment of the debt.

4 The defendant filed her defence and counter-claim on 23 January 2017. In her defence and counter-claim, she did not dispute the loan by the plaintiff to JASC. Not only that, she acknowledged the loan and debt but complained that the plaintiff did not sell the two properties mortgaged by JASC to the plaintiff as part security. Mr Sreenivasan SC, counsel for the plaintiff, submitted that the properties have been sold but the proceeds are insufficient to discharge the debt. He submitted that the plaintiff will give credit to the defendant and set off the proceeds against the debt. I believe that the defendant's defence was that as at 23 May 2015, when Chua J revised the interest rates, a sale of the mortgaged properties would have been sufficient to discharge her debt, and it was the plaintiff's fault for not foreclosing and selling them.

5 That point now seems irrelevant because in September 2017, the plaintiff and defendant commenced negotiations to settle this action. On 22 September a draft agreement was sent to Mr Bachoo Mohan Singh as the solicitor for the defendant at the time. Mr Singh initially said that he had no instructions, but on the next day, 23 September, he wrote again to say that he had instructions. Two days later, the defendant filed a notice of intention to act in person. Consequently, the plaintiff met the defendant on 26 September 2017 without solicitors on either side, and both parties signed the settlement agreement. As part of the terms, the defendant also signed a consent judgment

so that the plaintiff could enter judgment in this suit in the event of default by the defendant.

6 Default she did. She then informed that court that she was withdrawing her consent to the consent judgment. The consent order was therefore not entered, and the defendant subsequently opposed the plaintiff's application for judgment on the ground that the plaintiff's claim has been proved on the defendant's admission of facts. The learned assistant registrar dismissed the plaintiff's application for judgment on an admission. This appeal was brought by the plaintiff, and the defendant is represented by Mr Daryl Ong before me.

7 The provision in the Rules of Court (Cap 332, R 5, 2014 Rev Ed) on judgment on an admission of facts, O 27 r 3, provides as follows:

> [w]here admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

8 Mr Ong's main arguments were that there is insufficient proof of an admission by the defendant, and further, that the admission was contained in the settlement agreement which is not part of the plaintiff's claim in this suit (Suit 995 of 2016). If the plaintiff is unable to show that there is an admission of the debt claimed, it will not be awarded judgment on an admission; that is basic, and hence, if Mr Ong is right, this appeal will have to be dismissed.

9 The settlement agreement makes perfectly clear that it is an agreement made in order that the parties may "avoid further substantial expense, inconvenience and distraction of protracted litigation", resulting in them agreeing "that it would be in the best interest of all concerned to agree to a full

and final settlement of the Suit on the terms and conditions set out in th[e] Settlement Agreement". The effect of a settlement agreement is the same as the effect of any binding contract. In the case of a settlement agreement, it is usually intended to displace the litigation commenced such that in the event of a breach, the parties sue on the settlement agreement itself rather than to return to litigate on the original action which usually would be more cumbersome.

10 A settlement agreement, like any contract, holds the parties to the terms in the agreement. Hence, in some cases, the parties expressly provide a term in their settlement agreement that the original action be adjourned *sine die* (without a date) and either party may restore it in the event of a breach. That is usually the case where a plaintiff is accepting a much lower payment under the settlement agreement than he is claiming in the action.

11 There is also no doubt that the litigation in which the settlement agreement before me seeks to resolve was Suit 995 of 2016. That is set out in Recital A of the agreement. And in Recital C, it was plainly agreed that

> [The defendant] admits that as of the date of this Settlement Agreement the amount owing to [the plaintiff] is $3,694,666.93. [The defendant] also admits that interest continues to accrue on this sum at the rate of 5.2% per month.

12 Mr Ong's submission that the plaintiff cannot seek a judgment on an admission of facts in this suit and has to obtain judgment on the settlement agreement has a passing attraction, but for the reasons I am giving, there is no need for the plaintiff to sue on the agreement in this case. The parties had inserted as a condition in the settlement agreement that in the event of a breach of the payment schedule, the plaintiff will be entitled to enter a consent judgment, the terms of which are set out and signed by the defendant.

13 Every material fact pleaded in the plaintiff's statement of claim in this suit has been set out in the settlement agreement. The material divergences are that the plaintiff agrees to accept a lesser sum (for the avoidance of protracted litigation) and, further, grant the defendant $150,000 in cash immediately upon signing the agreement, with that sum subsumed in the overall (now lower) amount that the defendant agrees to pay the debt within 30 days from receipt of the $150,000, which the parties refer to in the settlement agreement as "the bridging loan". It is not disputed that the defendant received the $150,000. Yet the defendant has not fulfilled her obligations under the settlement agreement at all.

14 The settlement agreement provided that once the parties endorse it, the parties will take steps to have the trial dates of this action vacated (with the leave of the court). That was done, and the trial fixed for hearing in February 2018 was vacated, but the action has not been withdrawn; it has only been kept "in abeyance". That is what has caused all the problems. The plaintiff has to elect whether to revive the original action in light of the defendant's breach or to discontinue it and sue on the settlement agreement. It cannot do both. To use the settlement agreement as an admission under O 27 is a wrong and untidy way of obtaining a judgment under such circumstances generally, and in this case specifically. The plaintiff is claiming a far larger sum in the original action but the settlement agreement sets out a smaller sum. It ignores the fact that the action, if revived, entitles the defendant to defend the action, after all, the parties had intended the settlement to "avoid further substantial expense, inconvenience and distraction of protracted litigation", so if it is to be revived, the entire action has to be revived, including the defendant's right to defend. The application to obtain a judgment by admission is thus misconceived. But all is not lost for the plaintiff, in spite of the muddle it has gotten into by attempting to work calisthenics into a rigid procedure.

15 It is true that a defendant should have her day in court, and it is true that courts are loath to pass judgment without hearing a party. These are legal maxims, cited to rend tenderness from the court, often in undeserving situations, and this seems to me a classic example. The principal debt was only $500,000, and the two properties might have discharged the debt then. The two properties were worth about $357,000 and $350,000 respectively. The defendant claims that the plaintiff ought to have sold the properties, but the plaintiff says that it was the defendant who did not want the mortgaged properties sold earlier because she was then facing bankruptcy proceedings and payment to the plaintiff from the sales might have been seen as undue preference to the defendant. So ultimately, the debt ran up from $500,000 to more than $3,694,666.93, which may seem like a huge bite; but one does not go into a wolf's lair and expect to find rabbits.

16 The defendant also raised various other grounds. One was that "the Settlement Agreement was induced by fraud and/or misrepresentation". This would have been a strong ground to refuse the plaintiff's application, but the defendant has not produce any detail as to what that fraud or misrepresentation was that induced her to sign the agreement. Her counsel's submission only made reference to the "Defendant's Affidavit at [11]", but there was only one affidavit and no particulars were given there. That affidavit was marked as her second affidavit but the first affidavit does not seem to have been filed. This is therefore not an argument I can give any consideration to; one cannot expect the court to refuse an application such as this merely by crying "fraud". One needs to plead the details of the fraud. The defendant also claimed that the plaintiff had referred to "without prejudice" letters to prejudice her. Those letters were written in order that she could reach a settlement agreement with the plaintiff, which she did. We need only look at the signed agreement, a draft of which had been sent to her and her lawyer before she discharged him.

17 So where has all this taken us? The plaintiff's case to have judgment entered on an admission of facts is misconceived and unworkable and has to be dismissed, but the defendant cannot now say that the plaintiff cannot enter the consent judgment just because she is no longer consenting. The settlement agreement is signed and sealed. Neither party may vary its terms unilaterally. If the defendant now claims that the settlement agreement should be rescinded it is she who has to sue to set it aside. Badly drafted as this aspect of the agreement is, Suit 995 of 2016 is at an end once the consent judgment is entered. The term in the settlement agreement that the action be held in abeyance can only be a reference to the fulfilment of the agreement either by payment or the entering of the consent judgment.

18 For the reasons above, I dismiss the plaintiff's appeal against the AR's refusal to allow its application to enter judgment based on admission of facts under O 27, but the plaintiff is at liberty to enter the consent judgment under the settlement agreement. I will hear the question of costs on another date.

- Sgd -
Choo Han Teck
Judge

N Sreenivasan SC, Rajaram Muralli Raja and Kyle Gabriel Peters (Straits Law Practice LLC) for the plaintiff
Daryl Ong Hock Chye and Valerie Seow Wei-Li (LawCraft LLC) for the defendant.