

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1971] SGHC 19

Suit 1619/1970

Between

Yik Wah Trading (Pte) Ltd

... Plaintiff

And

Tan King Kak
Another

... Defendant

GROUND OF DECISION

Credit and Security — Money and moneylenders

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Yik Wah Trading (Pte) Ltd v Tan King Kak and Another

[1971] SGHC 19

Suit 1619/1970
A V Winslow J
22 December 1971

1 This was a claim by the private limited company carrying on the business of licensed moneylenders, for \$5,000 with interest against the first defendant, Tan King Kak and the second defendant, Sam Trading Co (sued as a firm of which Tan King Kak himself is the sole proprietor) on a promissory note dated 29 April 1970 (Ex AB1). It is undisputed that the second defendant company was a surety of the first defendant. Alternatively, the plaintiffs' claim was against the second defendant (Sam Trading Co) alone as drawer of two cheques dated 2 July 1970 totalling \$5,000 payable to cash or bearer which were dishonoured and still remain unpaid.

2 The defence as pleaded was to the effect that:

- (a) the plaintiff company was prepared to lend \$3,000 only in the first instance;
- (b) if the first defendant wanted \$5,000 he would have to pay \$500 service charges;
- (c) the said sum of \$500 was accordingly paid by the first defendant;
- (d) the plaintiff company gave him two crossed cheques, one for \$3,000 and another for \$2,000.

3 The first defendant also pleaded that he does not understand the English language and that the promissory note was accordingly void and unenforceable because of non-attestation as required by s 30 of the Moneylenders Ordinance 1959.

4 The first defendant also claimed in his defence that no copy of the said promissory note duly authenticated by the plaintiff company was delivered to him as required by s 16 of the said Ordinance and that the said promissory note does not fully contain the terms of the contract between the parties.

5 The defence also claimed that two cheques totalling \$5,000 were taken by the plaintiff company as additional or collateral securities in respect of the money-lending transaction between the parties and that these cheques were not in the name of the plaintiff company.

6 The defence of the second defendant adopts these contentions.

7 The plaintiff company called one witness, PW1, Ng Kian Hua, its managing director, who gave evidence to the effect that he discussed the terms of the loan with the first defendant between 11.00am and 12.00 noon on 29 April 1970 in Hokkien. He said that the first defendant would get the firm of which he was sole proprietor to stand surety for him and that he showed him the printed form AB1, in blank which, according to this witness, the first defendant said he understood by replying `OK`.

8 He then said he instructed his clerk to complete the note and went back to his own room leaving his clerk with the first defendant. Later, according to him, the clerk came to his room and told him that she had prepared and explained the agreement to the first defendant and that the first defendant had

made out two cheques which she, the clerk, handed to the witness (AB3 and AB6).

9 He then said that she (the clerk) made out two cheques which he said were crossed for \$2,000 and \$3,000 and dated the same day. He denied asking for service charges of \$500.

10 On 3 July 1970 he banked the two cheques, AB3 and AB6, which were returned marked `refer to drawer`. He laid he gave the defendant two cheques because the defendant asked him to make out two cheques. He then corrected this by saying that his clerk told him that the defendant wanted two cheques.

11 In support of his contention that the defendant understood English, he said that he heard his clerk and the defendant speaking in English when they were seated in the office outside his own air-conditioned room. (It should be noted that this witness himself does not understand English.)

12 He said that he had no personal knowledge of the delivery of a copy of the promissory note to the defendant.

13 After some hesitation, in answer to a question by counsel for the defence whether he had visited the worksite of the defendant in Beach Road to find out his worth, he replied that he could not remember anything apart from going to the worksite to serve the writ. He denied that the transaction was completed at about 2.30pm that afternoon. He insisted that it was over by noon.

14 He denied that the transaction took place between him and the defendant alone in his air-conditioned room. His reply to a question on this point was that the clerk was also there outside his room. When asked who dated the two

cheques given by the defendant, he replied that he did not know. In particular, about the date chop on AB3 on the cheque for \$2,000 he said that one of his clerks must have done it. He could not remember if the two cheques given by the defendant were undated.

15 At the continued hearing of the case on 19 July 1971, the plaintiffs rested the case where it had been left on 24 May 1971, since the managing director (PW1) had resigned and the clerk, Mdm Tay, was not available.

16 For the defence, counsel had necessarily to call only one person to speak on behalf of both the defendants, namely, Tan King Kak himself who was also the sole proprietor of the second defendant firm. Although there are technically two defendants, they consist of only one human being acting in two different capacities. This witness said that he signed the promissory note whilst it was blank both as borrower and as surety on behalf of the second defendant, Sam Trading Co. He said that he could not read or write English except that he had learned how to sign his name in English.

17 After observing his demeanour carefully in the box and taking it in conjunction with the evidence given by the plaintiffs' only witness and that by the first defendant that he did not understand the English language, except for a few words, I was satisfied that he was incapable of understanding what was written on Ex AB1 which he said he saw in blank apart from the printed words. I was also completely satisfied that of the two witnesses, Tan King Kak was telling the truth, not only with regard to his lack of understanding of the English language, either written or spoken, but also as to the details of what took place between him and the managing director of the plaintiff company on 29 April 1970.

18 I accept his evidence that he dealt with the managing director alone, that he paid what he called `football money` of \$500 since the managing director insisted that he would only lend him \$3,000 in the first instance and that if he, the defendant, insisted on \$5,000 he would have to give him \$500 service charges.

19 I accept the evidence that he took the managing director to the site and that the transaction between them was completed in the afternoon sometime past 2pm.

20 I am satisfied that he gave PW1 two cash cheques payable to bearer which he left undated and that PW1 himself tore out the second of these cheques from the middle of the second defendant`s cheque book. I am satisfied that the defendant gave these cheques at the managing director`s request. The managing director himself said he took the cheques as security. It is obvious from looking at the two cheques, AB3 and AB6, that they were written in different ink and that the signatures of Tan King Kak were placed on these two cheques by means of two different writing instruments. One may ask - why did they give each other two cheques? Was this because PW1 was only prepared to lend \$3,000 initially? It would seem so. In the ordinary way one would have expected the managing director, if he is telling the truth about the transaction, to give him one cheque for \$5,000, which he did not.

21 I am satisfied with regard to the contentions put forward by Mr Suppiah as counsel for the defence that there were the following contraventions of the provisions of the Moneylenders Ordinance:

(I) there was a clear contravention of s 26 of the Moneylenders Ordinance with regard to the taking of service charges;

(II) there was a clear contravention of s 30 of the Moneylenders Ordinance in that as the borrower was a person who did not understand the written language on the promissory note which was taken as security such note should have been attested by an advocate and solicitor, a magistrate, justice of the peace, commissioner for oaths, etc but this was not done. There was accordingly no compliance with the requirements of this section and the note was void;

(III) no copy of the promissory note authenticated by the lender was delivered to the defendant;

(IV) the taking of two cheques from the second defendant as additional security, in the name of the registered moneylender, has been omitted from the contract between the two parties (exh AB1) and there has been a clear contravention of the provisions of s 16 of the Moneylenders Ordinance (see ***Kent Trust Ltd v Cohen*** [1946] 1 KB 584).

22 It seemed to me quite clear that the plaintiffs could not possibly succeed in their claim against the defendants as pleaded, on this moneylending transaction, in view of the breaches to which I have referred. As to the alternative claim against the second defendant, I found it difficult to hold that the giving of the two bearer cheques, AB3 and AB6, by the second defendant as surety, could be divorced from the moneylending transaction so as to enable the plaintiffs to claim successfully that they were entitled to cash the cheques on the ground that they were bearer cheques. In my judgment these cheques could not be regarded ***in vacuo*** as cheques given otherwise than as cheques given by a surety. The terms of the contract between the parties were accordingly not set out in the note at AB1. Moreover the cheques were not made out in the authorised name of the licensed moneylender as payee as required by para (c) of s 8 and the taking of such cheques was accordingly illegal.

23 As the claim against the borrower failed, the claim against the surety became unenforceable. (See ***Temperance Loan Fund v Rose & Anor*** [1932] 2 KB 522.)

24 Another authority preventing the success of the plaintiffs' claim is ***Kent Trust Ltd v Cohen*** [1946] 1 KB 584 which states, per Tucker LJ that 'in order to comply with the section (ie s 6), where security is given the memorandum must set out with accuracy what the security is'.

25 In view of my findings of fact above and the law relating thereto I could not very well hold that the plaintiffs should at least get back the \$5,000 actually paid to the first defendant by cheques about which there is no dispute.

26 The provisions of the Moneylenders Ordinance as they stand would be rendered farcical if moneylenders could recover moneys advanced by way of loan in the circumstances revealed by this case. Not only have they failed to set out the exact terms of their contract with the alleged borrower but they have also acted illegally in securing undated cash or bearer cheques from the alleged surety. A striking feature of this case is the fact that the surety also happens to be a firm of which the borrower is the sole proprietor. Another feature revealed by the evidence, is that the money was actually required by the surety for the purchase of an earth excavator for the firm's business. The firm was in fact the borrower and the cheques, AB3 and AB6 were provided by the firm as security for the loan. In whatever way one views the transaction the terms of the contract have not been set out accurately in the promissory note at AB1. The claim therefore failed right from the start on that ground alone quite apart from the other breaches to which reference has already been made.

27 ***Plaintiff's claim dismissed***

A V Winslow J

Ong Tiang Choon (Ong Tiang Choon & Co) for the plaintiffs
P Suppiah (P Suppiah & Co) for the defendants
