

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1973] SGHC 27

DA 47/1971

Between

Kong Sing
Another

... Appellant

And

Kim Kuan (Pte) Ltd

... Respondent

GROUND S OF DECISION

Credit and Security — Money and moneylenders — Promissory note

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Kong Sing and Another v Kim Kuan (Pte) Ltd

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Chua F A J

14 November 1973

1 This appeal arises from an action in which the respondents, moneylenders, were plaintiffs and the appellants were defendants. The respondents claimed from the appellants the sum of \$3,037 due on a demand promissory note executed by the appellants in favour of the respondents for the sum of \$3,000 with 15% interest per annum thereon. The district court gave judgment for the respondents.

2 The appellants admitted executing the promissory note and receiving the loan of \$3,000 but contested the claim on the ground that certain provisions of the Moneylenders Act (Cap 220, 1970 Ed) (hereinafter referred to as the Act) had not been complied with.

3 The main contention of the appellants in the court below and here is that the promissory note was not attested in accordance with the requirements of s 30(1) of the Act.

4 The promissory note is in both English and in Chinese. The evidence of the director of the respondent company was that he spoke to the appellants in Chinese and after the promissory note and three copies of it were prepared he

handed them to the appellants for signature and the appellants told them that they did not read English. He then told the appellants that the promissory note was also in Chinese and both the appellants said that they could read Chinese and read through the promissory note and said that the promissory note was correctly made out. The evidence of the appellants on the other hand, was that they could read a little Chinese and that they could not read all the Chinese characters in the promissory note.

5 The district judge said in his grounds of decision that he was satisfied on the balance of probabilities that both appellants could read and understand the Chinese in the promissory note. The district judge was also of the view that as the appellants could read and understand Chinese and did read and understand the promissory note there was no necessity to have the promissory note attested as required by s 30(1) of the Act.

6 The material part of s 16(1) of the Act reads:

No contract for the repayment by a borrower or his agent of money lent to him or to any agent on his behalf by a moneylender or his agent after the coming into operation of this Act or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract, shall be enforceable unless a note or memorandum in writing of the contract in the English language is signed by the parties to the contract or their respective agents
...

7 Section 30(1) of the Act provides:

Whenever a promissory note is taken as security for any loan and the borrower is a person who does not understand the written language on the note the note shall be attested by an advocate and solicitor, a Magistrate, Justice of the Peace, commissioner for oaths or such other person as may be appointed by the Minister generally for that purpose. The attester shall explain the terms of the promissory note to the borrower, and shall certify thereon that the borrower appeared to

understand the meaning of the note. The money borrowed shall be paid over by the lender to the borrower in the presence of the attester who shall certify the fact upon the promissory note.

8 The district judge in his grounds of decision said:

This section (s 30(1)) refers to a promissory note the written language of which the borrower does not understand. It would appear from the reading of s 30(1) Cap 220 that a promissory note can be in a language other than English and in fact if a promissory note had always to be in the English language then the legislature would in my view have so stated instead of using the words `the written language` in s 30(1) Cap 220.

9 The district judge has failed to read s 30(1) with s 16(1). It is clear from s 16(1) that a promissory note to be enforceable must be in the English language and under the provisions of s 30(1) it is the promissory note in the English language that has to be explained to the borrower by certain designated officers and persons and attested if the borrower does not understand the English language.

10 It is not in dispute in this case that the appellants did not understand the English language and as the promissory note was not attested in accordance with the statutory requirements of the Act, it was void.

11 The appeal is allowed with costs here and in the court below.

12 ***Appeal allowed***

Chua F A J

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JG Advani (Advani & Hoo) for the appellant
R Ramason (R Ramason) for the respondent
