

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 94

Suit No 370 of 1984

Between

Koh Nai Chye

... Plaintiff

And

Tong Loong Pte Ltd

... Defendant

GROUNDS OF DECISION

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Koh Nai Chye v Tong Loong Pte Ltd

[1992] SGHC 94

Suit No 370 of 1984
Lai Siu Chiu JC
13 April 1992

1 Judgment:

2 GROUNDS OF JUDGMENT

3 At the conclusion of the trial on 3 March 1992 I awarded the plaintiff judgment against the defendants in the sum of \$200,000 with interest at 6% per annum from the date of the writ, that is from 18 January 1984 until judgment, together with costs to be taxed unless otherwise agreed. The defendants have filed an appeal against my judgment and I now give my reasons.

4 The defendants were incorporated in Singapore on 16 October 1979. According to their memorandum and articles of association (exh D1) their objects included the buying and selling of properties and land and also carrying on the business of building contractors and or developers.

5 The plaintiff (PW1) testified that sometime in November 1981 he was approached by Tay Beng Hock (Tay) for a loan of \$200,000 (the loan) for the defendants of which Tay was then the managing director. Prior thereto some three years earlier, the plaintiff had been introduced to Tay by his aunt Madam

Lim Geok Eng (PW2) as the plaintiff was then intending to get married and PW2 hoped he would purchase a property developed by the defendants. Tay had in fact shown to PW1 some properties then being developed by the defendants at Phillips Avenue and Geylang. At the worksites, the contractors acknowledged Tay as their boss. Tay requested the loan to enable the defendants to purchase a piece of land. PW1 testified that he did not have the funds so in turn he inquired of PW2 whether she would be interested to make the loan; PW2 agreed.

6 PW2 testified that she became acquainted with Tay sometime in 1975 through a distant relative of her husband. Tay told her he was a businessman, a managing director of a company and was also involved in the fisheries business. PW2 said she later invested in Tay's fisheries business. Her participation in the business included her advancing to Tay from time to time monies to pay for the import of fish from Thailand.

7 Having agreed to make the loan, PW2 instructed the plaintiff to see to the proper documentation her reason being that unlike the 'few tens of thousands of dollars' for the fisheries business which she advanced periodically to Tay, this was a very substantial amount. Further, not being literate in English, she requested that the plaintiff use his name as lender in the agreement. Tay agreed and said that the defendants' lawyer Choo Si Sen (DW3) of Tan, Lee & Choo would draw up the agreement.

8 On the morning of 3 December 1981 PW2 called the plaintiff to say that Tay was picking her up and in turn they would fetch him to go to her bank to withdraw the cash for the loan. After they had picked him up, the plaintiff testified that all three of them proceeded to American Express Bank in Shenton Way. There, PW2 said she withdrew approximately \$110,000. Together with another sum of about \$100,000 which she had taken from home, PW2 then

handed the \$200,000 to the Plaintiff in Tay's car. In turn the plaintiff handed the cash to Tay. PW2 then went home whilst the plaintiff and Tay proceeded to the office of Tan, Lee & Choo.

9 At the office of Tan, Lee & Choo, the plaintiff said he was introduced to DW3 by Tay; in fact everyone at the office including the firm's legal assistant Lee Ah Fong (Lee) knew Tay. After the introduction, Tay explained to DW3 that the plaintiff was lending \$200,000 to the defendants and requested that an agreement be prepared to evidence the loan. DW3 in turn instructed Lee to prepare the document (AB5) saying that the agreement must be done properly. After AB5 had been typed it was shown to the plaintiff and DW3 said that if it was acceptable, the agreement would be chopped with the defendants' rubber stamp and stamped. The plaintiff noted that AB5 was addressed to him and his identity card particulars were stated, it had Tay's name typed in with the word 'managing director.' Tay then chopped AB5 with the defendants' rubber stamp, signed it (presumably dated it 3 December 1981) and his signature was then witnessed by DW3 who told the plaintiff that he would arrange to have AB5 stamped by the government which was done subsequently (at \$1). Later Tay handed a copy of AB5 to the plaintiff who gave it to PW2.

10 DW3 testified that he left Tan, Lee & Choo on 1 September 1988 and he could not remember whether he had prepared AB5. An existing partner of the firm Tan Kai Hoe (DW4) testified that he could find no file relating to AB5. Lee who had joined the firm as a salaried partner on 9 September 1981 left on 28 February 1985, neither party called him as a witness.

11 It was however the common evidence of DW3 and DW4 that :-

12 (a) Tan, Lee & Choo acted for the defendants (described by DW3 as a small-time developer) for many years since about 1981 although they were not retainer clients. The firm acted for them in the purchase of land and mortgages.

13 (b) The firm required the defendants' board of directors to pass the requisite resolutions before acting for the defendants in the preparation of mortgages.

14 (c) The defendants had never borrowed money from individuals, only from financial institutions.

15 DW3 could not recall signing AB5 although DW4 confirmed that he could recognise the former's signature as witness in the document. DW3 vaguely remembered (and identified her in court) that Tay had brought him to PW2's house at Crescent Road in Katong; he could not recall having met the plaintiff.

16 The original of AB5 was never produced in court. A copy was produced in court as part of the plaintiff's bundle of documents which by consent of the parties was marked the agreed bundle, the basis of agreement being to dispense with formal proof as well as agreement on the contents. When cross-examined as to why he did not ask for the original of AB5, the plaintiff explained that he was told by Tay that a copy was just as good and the original was with the lawyers. Tay passed away on 2 July 1987.

17 PW2 testified that Tay told her that the defendants would repay the loan as soon as they had sold some properties they were then developing at Jalan Eunus, Hougang and Geylang. Alternatively if repayment was not made by the date stipulated in AB5 (31 August 1982) the defendants would sell to her a

property at a cheaper price. When no repayment was forthcoming from Tay after 31 August 1982, the plaintiff and PW2 became anxious and looked for him both at the defendants' office then at Sin Ming Drive and also at his home; Tay avoided them. According to PW2 this was after November 1981.

18 Finally the plaintiff decided to seek legal advice. Accordingly his solicitors sent a letter of demand to the defendants. Failing payment by the defendants, the writ in this action was issued on the plaintiff's behalf on 18 January 1984. The defence whilst admitting that AB5 was signed by Tay, denied that the defendants were thereby bound contending that the authority to borrow money by the defendants' board of directors as set out in article 76 of exh D1 had not been delegated to Tay. Paragraph 4 of the defence contended that the loan had in any event been repaid by Tay together with interest calculated at 4.5% per month. As the defendants failed to comply with an order of court dated 12 April 1985 to furnish further and better particulars of para 4 of the defence, the same was struck out by another order of court made on 8 November 1991.

19 The plaintiff was unsuccessful in his attempt at obtaining summary judgment against the defendants. In those proceedings Tay filed an affidavit on 16 April 1984 acknowledging the loan but contended that the same was given to him in his personal/private capacity and it had nothing to do with the defendants. There was also a further allegation that the loan had been repaid with particulars of the alleged repayment being given by Tay in another affidavit filed on 10 May 1984.

20 I have already dealt with the evidence of the two witnesses for the plaintiff and I shall now deal with the evidence of the defendants' other witnesses. Besides DW3 and DW4, the defence called three other witnesses two of which were/are the defendants' directors Lim Ba Hai (DW2) and his younger

brother Lim Tek Sin (DW1). It was clear from the evidence of the two brothers that apart from Tay, all the other directors of the defendants had their own business commitments be it selling pork (Lim Su Bok) running a Chinese medicine shop (Ong Kim Cheong) or a petrol kiosk (Chai Ming Chua). They did not work for the defendants on a full time basis. It was further admitted that Tay was the managing director of the defendants if not until his death then certainly until early 1984. Article 93 of exh D1 allowed for the appointment of a managing director for the defendants. Both DW1 and DW2 testified that until the defendants received the plaintiff's solicitors' letter of demand, they and the other directors had no knowledge of the loan and the defendants also never received the money. In any case the defendants did not need to borrow money in 1981. When confronted by them, Tay assured both brothers that the loan had nothing to do with the defendants, he would see their lawyers and attend to the matter personally.

21 The defendants' auditor Choong Chow Siong (DW5) confirmed that for the period 1975 to date the defendants only raised funds from financial institutions by way of secured loans. Before taking any loan, the directors would hold a board meeting and if a loan tabled at the meeting was accepted then the necessary resolution would be passed and a copy thereof would eventually be handed to him. DW5 testified that in 1981 the defendants did not pass any resolution relating to any loan for \$200,000 from the plaintiff. Prior thereto in 1980-1981, the defendants took a loan from a bank.

22 From the evidence it was common ground that:-

23 (a) Tay was the managing director of the defendants at the time that the loan was extended by PW2 in the plaintiff's name. (b) Tay undoubtedly deceived both parties in representing to the plaintiff that the defendants needed the loan.

24 (c) Tan, Lee & Choo were the defendants' lawyers in 1981 and they still act for the defendants. They consulted DW4 on conveyancing matters and DW3 on other matters.

25 Although DW3 could not confirm that he prepared the document neither did he deny preparing it; there is no doubt on the evidence that it was most probably Lee who prepared AB5. In any event the plaintiff's testimony that it was drafted in the office of the defendants' solicitors was not challenged and I accept as true his evidence of what transpired at their premises on 3 December 1981 < Browne & Dunn (1893) 6 R.67 > . That being the finding, more care should have been taken by DW3 to ensure that AB5 if it was to acknowledge a loan made to a limited company, complied with certain requirements the chief of which (given his own testimony) were that it must be approved by a resolution of the defendants, that Tay was the appointed signatory for the Defendants and if not, that the document was executed under the company's seal. Lee was then a legal assistant/salaried partner having recently joined the defendants' solicitors' firm some three months earlier in September 1981 and according to DW3, Lee assisted him doing mostly criminal work. Given his relative inexperience in particular in corporate/civil matters, Lee should not have been assigned the task of preparing a document upon which the plaintiff relied to protect his aunt's interests. DW3 knew and if not then he ought to have known this reliance by the very presence of the plaintiff in his office. The fact that no file appeared to have been opened by the firm relating to AB5 (probably because it was done as a favour for a regular client without charge) does not mean that any less care should have been taken in its preparation. I regret to say that no such care was exercised.

26 This case is a classic example of the application of the rule in < Turquand's > case as derived from < Royal British Bank v Turquand (1856) 6

E.& B 327 > and further illustrated in < Mahony v East Holyfood Mining Co.(1875) L.R.H.L. 869 > and < Freeman & Lockyer v Bukhurst Park Properties (1964) 2.Q.B.480 > . Is an outsider (in this case the plaintiff) dealing with a company (the defendants) bound to ensure that all the internal regulations of the company have been complied with as regards the exercise and delegation of authority? Based on the authorities, the answer must be in the negative, more so on the facts of this case. Tay's act of borrowing money was not ultra vires the defendants' objects since article 76 (page 16 of exh D1) of their memorandum and articles of association empowered the directors to borrow money. Tay was appointed managing director pursuant to article 93 whilst article 95 (page 17 of exh D1) empowered the directors to confer upon a managing director any of the powers exercisable by them. Even if he did not have the actual authority to do so, Tay certainly had the ostensible authority to borrow for the defendants. Given that AB5 to evidence the loan was prepared by and in the office of, the defendants' solicitors, I do not agree that the plaintiff was under any further obligation as was suggested to him by counsel for the defence, to ensure that there had been compliance by Tay with the company's internal regulations. As was said by Lord Hatherley (at page 894) in < Mahony v East Holyford Mining Co >

27 'When there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company.'

28 In < Freeman & Lockyer v Buckhurst Park Properties > it was held that a director who had assumed the powers of managing director with the company's approval although he had never been formally so appointed bound the company by entering into a contract with the plaintiff architects. The act of

engaging architects was within the ordinary ambit of the authority of a managing director of a property company and the plaintiffs did not have to inquire whether the person with whom they were dealing was properly appointed; it was sufficient for them that under the articles there was in fact power to appoint him and that the board of directors had allowed him to act as such.

29 As Tay had passed away by the time this case came to trial, one can only speculate that it was not unexpected of him to have admitted in his affidavit that the loan was taken in his personal capacity rather than as agent for the defendants as taking the latter stand may well have resulted in criminal sanctions against him. On the question which of two innocent parties should suffer the loss, I am of the view that it would be a graver injustice to deny the plaintiff his relief on the ground that he ought to have known the 'indoor mangement' rules of the defendants; the law does not impute any such duty to him. As the defendants chose not to join Tay as a third party to these proceedings which action in any event is timebarred by now, the defendants will have to repay the loan out of their own funds on the judgment which I awarded to the plaintiff.

Lai Siu Chiu JC

Rengarajoo for the plaintiff
Ranjeet Singh for the defendants
