

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 183

DCA79/1991

Between

Tunas Private Limited

... Plaintiff

And

Flexi Van Leasing Inc

... Defendant

GROUND OF DECISION

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Tunas Private Limited v Flexi Van Leasing Inc

[1993] SGHC 183

DCA79/1991
Lai Siu Chiu JC
03 August 1993

1 **Judgment:**

2 Coram: Lai Siu Chiu JC

3 **Cur Adv Vult**

4 JUDGMENT

5 The defendants/appellants appealed against the decision of the district judge awarding judgment in favour of the plaintiffs/respondents in the sum of US\$17,068.21 together with interest quantified at US\$7,401.53 and costs. Having taken time to consider the matter, I find that the appeal has no merits and accordingly I am dismissing it with costs to the respondents.

6 The facts which gave rise to the respondents' claim are as follows:

7 1. The respondents are a container and chassis leasing company and the appellants are a Singapore company.

8 2. Sometime in 1982 the respondents leased 1,000 containers to an Australian company Sin Wah Shipping Enterprises Pty Ltd (Sin Wah). Sin Wah defaulted under and the respondents terminated, the lease. The respondents' regional manager based in Hong Kong Zen Quek Khai Seng (Quek) said he heard strong rumours that Sin Wah was in serious financial difficulties. As it turned out the rumours were true as provisional liquidators were appointed to Sin Wah by the New South Wales Court on 12 August 1982 prior to winding up proceedings.

9 3. At that time there were in Hong Kong on transit to Australia 142 of the 1,000 containers leased by Sin Wah. These had originally been delivered to Tunas Taiwan for stuffing of cargo by Taiwanese shippers. The respondents repossessed the 142 containers (the containers). Quek (PW1) said that he requested Sin Wah's Hong Kong agent Royman Corporation to discharge the cargo in the containers which were then at the port depot.

10 4. In July 1982 Tunas Taiwan were the shipping agents of Sin Wah. James Kao (Kao) the then manager of Tunas Taiwan went to Hong Kong in August 1982 to see Quek, he did not want the Taiwanese cargo to be discharged, he wanted the containers to be released to him for transshipment to Australia. Quek agreed provided Kao (DW1) furnished a banker's guarantee for US\$400,000 being the replacement value of the containers. Kao was unable to furnish the guarantee. Quek refused to accept Tunas Taiwan as the new lessee because he was not certain it had assets.

11 5. According to Quek, Kao then suggested that the appellants take over the lease for the containers saying his brother-in-law is Melvin Tong who is the son of Tong Djoe who in turn is the owner of the appellants. Quek a Singaporean

knew that the appellants owned Tunas Building. He checked with his Singapore office who confirmed that the appellants were a company of substance.

12 6. On his second visit, Kao asked Quek whether he could confirm the lease with the appellants. Quek said he still needed confirmation that Kao was authorised to sign the lease on behalf of the appellants. In Quek's presence Kao telephoned the appellants and spoke to their shipping manager Sunny Tay (Tay) who was/is Kao's good friend. The telephone was then passed to Quek who explained to Tay (DW2) that the appellants would be the lessee and that he wanted confirmation of Kao's authority to sign the lease agreement for the appellants (which had already been prepared on 19 August 1982 because Kao said the matter was urgent and he needed to ship the cargo to Australia).

13 7. On the following day the respondents received a telex from the appellants copied to Kao, marked for Quek's attention as follows: We, Tunas Pte Ltd, confirm that Mr James Kao of Tunas Taiwan is authorised to sign the lease agreement of following containers

14 132 units -- 20'

15 10 units -- 40'

16 8. On the strength of that telex the leases (the agreements) were signed on 20 August 1982 and Quek released the containers to Kao. At Kao's request the agreements (2) had endorsed thereon these words 'units are direct interchanged from Sin Wah Shipping Enterprises to Tunas (Pte) Ltd, Singapore' meaning that the containers were transferred to the appellants 'as is where is' without their contents having to be unstuffed.

17 9. Under the agreements the containers had to be returned to the
respondents in Australia; this was done sometime in September 1982 but rental
charges amounting to US\$12,604 were not paid. The respondents also incurred
'repair' charges amounting to US\$2,088.71 for steam-cleaning, washing and
repairing the containers as well as another US\$2,383.50 for handling charges in
lowering the containers to the ground.

18 10. The respondents' bills totalling US\$17,068.21 were forwarded to the
appellants' Singapore address but were not paid. Unknown to the respondents,
every time the appellants received their bills or reminders for payment, the
appellants forwarded the same to Tunas Taiwan requesting the latter to pay for
the reason that the lease was signed with Tunas Taiwan. This exercise continued
from 1 November 1982 until 16 August 1983. Then on 30 August 1983 Kao
forwarded to the appellants marked for Tay's attention 'a copy of the lease
agreement signed by me'. It is not in dispute that it was then that the appellants
realized for the first time that they were a party to the agreements.

19 The claim

20 The respondents instituted proceedings in May 1984 for their claim of
US\$17,068.21. The initial defence filed by the appellants in August 1984
merely

21 (i) denied that they had entered into the agreements as alleged;

22 (ii) asserted that if they had entered into any such agreements the same
were made by Kao without their authority.

23 A month before the trial in August 1991, the defence was substantially amended to inter alia plead the following (see paras 6 to 14):

24 (i) the respondents wanted Tunas Taiwan to enter into a fresh lease agreement with the respondents for hire of the containers to replace their existing lease with Sin Wah;

25 (ii) Kao acceded to the respondents' request without the consent/agreement of Sin Wah (in liquidation) and purportedly did so on the appellants' behalf on 19 August 1989;

26 (iii) on 20 August 1982 at Kao's request the appellants' manager sent a confirmation telex purportedly of Kao's authority;

27 (iv) the telex was sent without the authority of the appellants' board of directors and the alleged lease was not authorised by any of the directors or the board of directors of the appellants;

28 (v) alternatively if the appellants had entered into a valid lease, the same was supported by past consideration and or by the respondents' failure to perform the terms of the purported lease and the consideration if any had wholly failed.

29 The appellants' case

30 In the petition of appeal the appellants inter alia contended that the learned district judge had erred in law and in fact:

31 (i) in finding that they had entered into the agreements through their servant (presumably Tay) who had authorised Kao to sign the same;

32 (ii) in holding that the respondents had relied on the representation in their telex 20 August 1982 seen only on 21 August 1982 when the agreements had already been signed on 19 August 1982;

33 (iii) in finding that the respondents must have entered into the said agreements based on the oral assurance of Tay that Kao would be authorised to sign the agreements on their behalf;

34 (iv) in finding that Kao's act in entering into the agreements could be ratified by their telex 20 August 1982 when by then the respondents had completed performance of the agreements by not repossessing the containers;

35 (v) in failing to find (even if the agreements were valid) that there was neither consideration nor delivery of the containers to the appellants.

36 With particular reference to the skeleton arguments presented by Mr Netto at the appeal, I shall now give my reasons for dismissing the appeal:

37 a) Mr Netto said that the district judge was wrong to find that Tay as the shipping manager must have had the apparent if not actual authority to make lease arrangements or to authorise someone to do so. Counsel contended that the court failed to consider that the agreements were completely against the appellants' interest with no benefit whatsoever to the appellants; the agreements were in substance guarantees given for the benefit of Tunas Taiwan. I disagree that the agreements were in the nature of guarantees as at law, a guarantee is a collateral promise to answer for the default of another, here there was a direct written agreement between the appellants and the respondents. On the question of Tay's authority, according to Boustead on Agency 14 ed at p 102 'the third party the respondents will be entitled to assume that the agent had the authority

to delegate where such authority to do so would normally be implied he will be entitled to make that assumption even though the authority to delegate had actually been negated between principal and agent, provided he did not know of this'. The question that arises is whether authority to delegate would 'normally be implied' on the part of the shipping manager. According to *De Bussche v Alt* (1878) 8 Ch 286 the authority to delegate should be implied where, from the conduct of the parties to the original contract of agency, the usage of trade, or the nature of the particular business which is the subject of the agency, it may reasonably be presumed that the parties to the contract of agency originally intended that such authority should exist (per Thesiger LJ at pp 310-311).

38 b) Mr Netto said that the court had made two directly contradictory findings on the same issue:

39 1. that the agreements dated 19 August 1982 were signed on 20 August 1982 after the receipt of the appellants' telex dated 20 August 1982;

40 2. that the agreements were probably signed on 19 August 1982 after the telephone call to Singapore when Quek spoke to Tay. He said that on the evidence the second finding was the more likely except that there was no conversation between Tay and Quek. Given that the court made a finding that the respondents acted on the oral assurance of Tay, the question of ratification does not arise. Assuming however that it does, the issue of ratification only arises in regard to the relationship between Tay (the agent) and Kao (the sub-agent), not to the relationship between the appellants and Tay as there is no privity of contract between a principal and a sub-agent (see *Boustead on Agency* at pp 105-106). Therefore on the facts, Tay did at least ratify Kao's acts by sending the respondents the telex of 20 August 1982.

41 c) Mr Netto said there was no consideration for the agreements as

42 1. the original leases with Sin Wah were not admitted at the trial;

43 2. there was no evidence on which clause in the original leases entitled
the respondents to terminate the same and

44 3. there was no letter of termination to or repossession from, Sin Wah
for the containers. On the consideration issue there was certainly consideration
which moved from the promisee in the respondents allowing Tunas Taiwan the
continued use of the containers. Whether or not the respondents breached their
contracts with Sin Wah is irrelevant.

45 d) Counsel pointed out that the appellants had specifically pleaded in
para 15 of the amended defence that they do not admit the respondents' claims
for the handling charges and the court should not have accepted Quek's hearsay
and vague evidence that all the bills must have been paid. Further the
respondents had admitted that repair charges were included in the insurance
premium. I am of the view that although there is no direct evidence of payment
it was sufficient to infer from Quek's evidence that on a balance of probabilities
payment was made, bearing in mind Quek's testimony that if no payment had
been made, the respondents would have been pressed for payment. As for the
issue of the insurance clause this was never raised in the appellants' amended
defence and should quite properly be disregarded.

46 It is noteworthy that the appellants did not raise any arguments against
the district judge's finding that Tay had apparent authority to enter into the lease
agreements. Tay in his evidence said that what he had in mind in the appellants'
telex of 20 August 1982 was to authorise Kao to sign the agreements for Tunas

Taiwan but unfortunately the telex was differently worded. To interpret the telex to have that meaning however is illogical as it made no sense for the appellants to authorise Kao to sign for another company Tunas Taiwan when he as the latter's manager already had the authority to do so. Indeed in his skeleton arguments Mr Netto conceded that Tay may have had apparent authority to enter into leasing arrangements but not for guarantees dressed as lease agreements. Since I have already held that the agreements were leases and not guarantees, there is no necessity for me to address this last point.

47 Accordingly I dismiss the appeal with costs to the respondents.

Lai Siu Chiu JC

Bevin Netto & Peter Pang (Peter Pang & Co) for the appellants
Koh Ching Ian (Drew & Napier) for the respondents
