

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 54

SUIT738/1987

Between

Intraco Limited

... Plaintiff

And

Wan Soon Construction Pte
Ltd

... Defendant

GROUND OF DECISION

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Intraco Limited v Wan Soon Construction Pte Ltd

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L P Thean J

10 March 1993

1 **Judgment:**

2 Coram: L P Thean J

3 **GROUNDS OF JUDGMENT**

4 At the conclusion of the hearing of this action, I held that the plaintiffs had established their claim against the defendants, and accordingly I gave judgment to the plaintiffs in the sum of \$100,000 as claimed together with interest at 6% per annum from the date of the writ to the date of the judgment. I also awarded costs of the action to the plaintiffs. I now give my reasons.

5 The plaintiffs' claim against the defendants was for the sum of \$100,000 under the guarantee dated 21 April, 1986 ('the guarantee') issued by the defendants to the plaintiffs. The material terms of the guarantee were as follows:

6 In consideration of you from time to time supplying wire rods or otherwise giving credit to or on account of UNIVERSAL WIRE MESH (S) PTE LTD of 456 Alexandra Road #14-00, NOL Building, Singapore (hereinafter

referred to as 'the Principal') we, WAN SOON CONSTRUCTION PTE LTD of 183-B Goldhill Shopping Centre, Thomson Road, Singapore (hereinafter called 'the Guarantor') do hereby guarantee to and agree with INTRACO LIMITED of 456 Alexandra Road #14-00, NOL Building, Singapore (hereinafter referred to as "Intraco") as follows:-

7 1. The Guarantor will pay Intraco on demand in writing all sums in excess of the first Singapore Dollars ONE HUNDRED THOUSAND (S\$100,000.00) which are now or shall hereafter become due to Intraco from the Principal either alone or in conjunction with any other corporation or corporations, person or persons and which the Principal fails or neglects to pay PROVIDED that the total aggregate amount recoverable from the Guarantor hereunder is limited to the sum of Singapore Dollars ONE HUNDRED THOUSAND (S\$100,000.00) plus interest charges costs commissions and expenses legal or otherwise incurred on all such debts and liabilities of the Principal as aforesaid to the date of payment plus the costs and expenses of obtaining payment thereof and enforcing this Guarantee.

8 The principal debtor named in the guarantee was Universal Wire Mesh (S) Pte Ltd ('Universal'), a company in which the plaintiffs had 45% interest. The company subsequently went into liquidation and was unable to discharge its liability to the plaintiffs. Hence the Plaintiffs brought this action against the defendants. In their statement of claim, as subsequently amended, the plaintiffs averred that the amount owing to them from Universal as at 31 December 1986 was \$207,630.27, and pursuant to the terms of the guarantee the plaintiffs claimed the amount of \$100,000.

9 To that claim, the defendants raised the following defences. First, there was no consideration given by the plaintiffs for the guarantee or alternatively,

if there was consideration, it was past consideration. Secondly, they averred that of the sum of \$207,630.27 alleged to be due to the plaintiffs from Universal, a sum of \$184,000 represented the total amount of management fee claimed by the plaintiffs. The defendants were not liable for such management fee on the ground that it was an express term of the guarantee that the consideration, if any, should consist of the plaintiffs supplying wire rods or otherwise giving credit to or on account of Universal from time to time. Accordingly, the sum of \$184,000 should be deducted from the \$207,630.27 leaving a balance of \$23,630.27 which was the amount alleged to be due for the supply of wire rods by the plaintiffs to Universal on credit. On this basis, the amount for which Universal was liable to pay to the plaintiffs and which was covered by the guarantee did not exceed the sum of \$100,000 and accordingly, the defendants were under no liability. Lastly, the defendants averred that if the plaintiffs were entitled to include in their claim under the guarantee the management fee, the defendants' liability in respect of such payment arose only after the signing of the guarantee and the sum claimed to be due for management fee for the period after 21 April 1986 was \$28,000 which together with the sum of \$23,630.27 did not exceed \$100,000, and on this basis also the defendants were not liable for any amount under the guarantee.

10 I now turn to each of the defences raised. There was no merit at all in the first defence. The plaintiffs had adduced evidence which showed that after the issue of the guarantee the plaintiffs supplied and continued to supply iron rods to Universal on credit. One Patrick Thong Sin Yin testified that at the material time he was in the employment of the plaintiffs and was in charge of the metal division and handled the account of Universal. There were orders placed by Universal for purchase of materials and the plaintiffs did supply the materials to Universal on credit. He produced a record of the transactions

between Universal and the plaintiffs in respect of the period after the issue of the guarantee. He further produced purchase orders placed by Universal and copies of the invoices evidencing the sales of the materials. In the course of the trial, it was accepted by the plaintiffs and the defendants that in respect of invoice No 29908 there was a balance of \$5,783.36 owing to the plaintiffs from Universal; that in respect of invoice No 29920 the amount of \$6,084 had been fully paid, and that in respect of invoice No 29925 the agreed amount outstanding was \$17,831.44. All these amounts arose out of supply of iron rods by the plaintiffs to Universal after 21 April 1983. Goods were therefore supplied by the plaintiffs to Universal on credit after the date of the guarantee and there was nothing to suggest that these supplies were not made by the plaintiffs in reliance on the guarantee. It was clearly not arguable that no consideration for the guarantee was given or that the consideration for the guarantee was past consideration.

11 On the second defence, the terms of the guarantee were extremely wide and covered all sums in excess of the first \$100,000 which were then or would thereafter become due to the plaintiffs from Universal. The language of cl 1 of the guarantee was clear and unambiguous. There was nothing in the guarantee to suggest, or from which it could be implied, that the guarantee would cover only the liability of Universal for the goods supplied by the plaintiffs. In my opinion, there was no scope for any argument for excluding other liability of Universal, e.g. management fee, from the amount guaranteed.

12 This defence confused the consideration provided by the plaintiffs for the guarantee with the obligation of the defendants under the guarantee. The consideration provided by the plaintiffs was supplying wire rods to Universal or otherwise giving credit to Universal from time to time. That was expressed in very clear terms at the commencement of the guarantee. The obligation under

the guarantee which the defendants had accepted was that they would pay on demand all sums in excess of the first \$100,000 which were then or would thereafter become due to the plaintiffs from Universal, either alone or in conjunction with others, and which Universal failed to pay. This obligation was not confined to the prices of goods sold and delivered to Universal which Universal failed to pay; it extended to all other sums for which Universal was liable to pay to the plaintiffs and which Universal failed to pay. It also included all sums due to the plaintiffs from Universal at the time of the execution of the guarantee. The words in the guarantee 'all sums which are now or shall hereafter become due ...' were clear and unambiguous. There was nothing in the guarantee to suggest that the obligation of the defendants was in any way limited by the consideration provided therein.

13 The third defence was equally unmeritorious. As I have said, the terms of the guarantee included all sums of moneys which were then due to the plaintiffs from Universal, and I was unable to accept the argument that the guarantee did not extend to liability for management fee which had accrued before 21 April 1986. Accordingly, in my judgment, this defence also failed.

14 In the course of the trial and at the conclusion of the hearing, a further defence was raised on behalf of the defendants and it was this: there was no management services rendered by the plaintiffs to Universal and therefore the sum of \$184,000 representing the total amount of management fee was not payable by Universal to the plaintiffs. This was not pleaded in the amended defence and strictly speaking it was not opened to the defendants to lead evidence in support. Be that as it may, I propose to deal with it briefly. There was clearly evidence before me evidencing the liability of Universal for payment of the management fee. The minutes of the meetings of the board of directors of Universal held on 9 September 1983 and 3 August 1984 were

produced. These showed that the board agreed to the payment of management fee for management services provided. No attempt was made to challenge the minutes of the meeting. In the statement of affairs of Universal filed and signed by one Alan Tan Poh Ann, one of the directors of Universal, the amount admitted as owing to the plaintiffs was \$218,681.70 which included the sum of \$184,000 as management fee. There was the evidence of Wong Kok Leong who was in the employment of the plaintiffs at the material time as the assistant accountant. He testified that at the material time, the plaintiffs seconded an accountant to look after and take charge of the accounts of Universal, and administrative, accounting and financial services were provided to Universal by the plaintiffs. The financial services consisted of liaising with banks and management of funds and there was also provision of computer support for the accounting system of Universal. In respect of such services, he made out debit notes to Universal. All these debit notes were produced and they were signed by him.

15 The defendants called one Kor Kee Tee, who is the chairman of the defendants and at the material was the vice-chairman of Universal. His evidence was that no management services were provided by the plaintiffs. However, from the evidence he gave, it appears to me that he was involved only on the business side of Universal and he was not conversant with the administration side of Universal, for instance, the accounting and financial services provided. As he said, his involvement was merely to secure more business for Universal. He was not in the position to say whether the accounting and other services had been provided by representatives of the plaintiffs at the plaintiffs' office and his testimony on this aspect of the case was totally unhelpful. It is significant that he was present at the meeting of the board of directors of Universal held on 3 August 1984 at which the payment of \$4,000 per month to the plaintiffs as

management fee was approved. I was therefore unable to accept his evidence that no management services had been rendered by the plaintiffs to Universal.

16 In conclusion, none of the defences raised by the defendants had any merit, and, in my judgment, there was absolutely no defence to the claim.

L P Thean J

David Mitchell for the plaintiffs
K S Chung with Doris Chia I Lim for the defendants
