

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 8

S1379/1991

Between

Raman Subbalakshmi
Krishnan

... Plaintiff

And

Indian Overseas Bank

... Defendant

GROUND OF DECISION

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Raman Subbalakshmi Krishnan v Indian Overseas Bank

[1994] SGHC 8

S1379/1991
L P Thean JA
07 January 1994

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Judgment:

2 Coram: L P Thean JA

3 GROUNDS OF JUDGMENT

4 The plaintiff at all material times was a customer of the defendants ('the bank'),

which carry on business in Singapore and elsewhere. On or about 29 April 1987
and 12

September 1989, the plaintiff placed with the bank on fixed deposit respectively
two sums,

namely: US\$21,259.40 ('the first deposit') evidenced by the receipt No. 27006
(the first

receipt') and US\$29,702.82 ('the second deposit') evidenced by the written confirmation

No. 128319. In respect of these deposits the bank received two letters expressly headed

'Letter of Authority' both in identical terms, one dated 10 June 1987 and the other dated

12 September 1989, and both on the face thereof bore the signature of the plaintiff. Each

letter of authority referred to the respective deposit and, so far as material, contained

the following:

5 In consideration of your having at my/our request, agreed to grant/granted/agreed to

continue the loan/advance/credit facilities/any other liability arising out of credit

facilities to me/us/Mr./M/s M/S CONSMECH ENGINEERING PTE LTD I/we hereby authorise you to

hold the undermentioned deposit(s) or any deposit(s) in renewal thereof as security for

all moneys now owing or which shall at any time hereafter be owing from
me/us/Mr./M/s M/S

CONSMECH ENGINEERING PTE LTD in any manner whatsoever as
continuing security.

6 Should the said loan/advance/ credit facilities/any other liability of
mine/ours is

irregular or overdue or found difficult to recover, you have my/our authority
without any

reference or notice to me/us to apply the proceeds of the said deposits including
interest

at any time either on due date(s) or before the due date(s) of all or any of the
deposits,

towards adjustment of loan/advance/credit facilities and/or any other liability of

mine/ours in any manner whatsoever and pay/credit the surplus, if any left to
my/our

account. In the event of foreclosure before maturity we are agreeable to your
allowing

interest as per Bank's rules for premature withdrawals.

held by the bank as security for payment of all moneys owing at any time from
Consmech

8 The first deposit was renewed annually and was last renewed on or about
28 April 1989

deposit matured also on 30 April 1990. On that day, 30 April 1990, the two deposits were

combined into one sum of US\$58,409.94 and were renewed to mature on 30 April 1991 as

evidenced by the written confirmation No. 136836. Prior to the date of maturity, the bank

on 21 February 1991 wrote to the plaintiff referring to the deposit given to the bank as

security for the cash credit facilities' allowed to Consmech, advising that the amount

then due from Consmech exceeded the limit prescribed and requesting the plaintiff to

prevail upon Consmech to reduce the overdue amount, and further stating that otherwise the

bank would proceed 'to foreclose the deposit' and apply the proceeds towards the amount

due. On 16 March 1991, the plaintiff wrote to the bank stating that she had not at any

time consented to the fixed deposit 'to being lien for the borrowings' of Consmech.

Subsequently, on 18 March 1991, the bank wrote to the plaintiff stating that in view of

the failure on the part of Consmech to pay the outstanding in their 'cash credit account'

the bank had on 13 March 1991 'foreclosed the deposits' given as security and appropriated

the proceeds of US\$61,174.47 towards partial payment of the amount due and owing from

Consmech in the cash credit account.

9 On 29 June 1991, the plaintiff instituted this action against the bank claiming the sum

of US\$58,409.94 together with interest and damages and costs. In her statement of claim

the plaintiff in substance averred that she had deposited with the bank the sum of

US\$58,409.94 on fixed deposit which was the cumulative total of the two deposits placed

with the bank on or about 29 April 1987 and 12 September 1989, that she did not signed the

two letters of authority dated 10 June 1987 and 12 September 1989 respectively under which

the bank claimed to have a security on the deposits and that she did not at any time

authorise the bank to apply the deposits in payment to themselves. She also averred in the

alternative that the bank negligently applied the moneys due to the plaintiff

towards

settlement of the account of Consmech. The bank contested the claim and did not admit that

the plaintiff did not sign the two letters of authority, and they denied that they were

negligent in applying the money towards settlement of the account of Consmech. The action

was heard before me and at the conclusion of the hearing I dismissed the plaintiff's claim

with costs. I now give my reasons.

10 The central issue before me was whether the two letters of authority were signed by the

plaintiff. The plaintiff's case was that she did not sign them. On this issue the burden

of proving that the documents were signed by the plaintiff rests with the bank: see s 69

of the Evidence Act (Cap 97, 1990 ed). That section provides:

11 69. If a document is alleged to be signed or to have been written wholly or in part by

any person, the signature or the handwriting of so much of the document as is alleged to

be in that person's handwriting must be proved to be in his handwriting.

12 I now turn to the evidence adduced by the parties. The plaintiff's evidence, so far as

material to the issue, was this. In April 1987 she withdrew her moneys from United

Commercial Bank Ltd, converted the amount into US Dollars and deposited half of the amount

with the defendant bank and the other half with the Bank of India. K R Krishnan

('Krishnan'), her nephew, assisted her in these transactions. He brought her to United

Commercial Bank Ltd to withdraw the moneys and to the defendant bank and Bank of India to

place the deposits. Other than this occasion she did not go to the defendant bank in

relation to this transaction. In September 1989 she withdrew her deposit then placed with

the Bank of India and wanted to place all her money with the defendant bank.
Again,

Krishnan assisted her; he brought her to the Bank of India to withdraw the
money and she

received a cheque for the amount, but Krishnan did not bring her to the
defendant bank to

place her deposit. She gave the cheque to him and he deposited it with the bank.
Soon

after she withdrew her money from the Bank of India she received news that her
son in

India had an accident, and she and her daughter, Krishnan Vasanthi, left for
India on 10

September 1989. She produced her passport and other evidence to show that she
was in India

during the period from 10 September 1989 to 28 February 1990.

13 Krishnan is her late husband's nephew. Her late husband brought
Krishnan from India and

obtained a job for him in Singapore. Krishnan stayed with her and her family.

While she

was in India (i.e. during the period September 1989 - 28 February 1990),
Krishnan got

married and on her return she moved in and stayed with Krishnan and his wife.
Her

relationship with them was normal. The plaintiff further said that Krishnan did
not tell

her that the deposit was placed 'under lien' with the bank and she did not
understand what

was 'lien'. The plaintiff said that she did not sign the two letters of authority. On

discovering that her signatures had been forged she made a report to the police.

14 In cross-examination, the plaintiff denied that she signed the two letters
of

authority. She admitted that Consmech was an engineering company which was
formed to take

over the business of her late husband. Her husband, when he was alive, was
carrying on the

business of a firm called Raman & Company. When her husband passed away,

Consmech was

formed and took over the business of her late husband. She admitted that she knew that

Consmech was an engineering company and that as at 29 April 1987 she was aware that her

daughter, her late son and her nephew, Krishnan, were all directors of Consmech. She,

however, said that she did not know anything of the business and did not discuss any

matter concerning the company with her son or daughter because she would not understand

company matters. Krishnan handled all the documents pertaining to the opening and placing

of the two fixed deposits. She had never seen the fixed deposit receipts - not even the

first receipt. She denied that she signed on the reverse of that first receipt. She

admitted that she trusted Krishnan. As to why she should withdraw the second deposit from

the Bank of India and placed it with the defendant bank, she said that 'it would facilitate' for her and it was Krishnan who told her to put it in the defendant bank.

15 The plaintiff's daughter, Krishnan Vasanthi, also gave evidence. She said that her late

father ran a business known as Raman & Company prior to his death. He arranged for

Krishnan to work in Singapore. After his death, Consmech was formed and it was formed by

Krishnan sometime in 1983. The company took over the business of Raman & Company. She

and her late brother were directors of Consmech. In cross-examination she admitted that

she was a director as well as a shareholder of Consmech. She was not involved in running

the business but she was requested to sign a personal guarantee in favour of the defendant

bank and she did sign such a guarantee.

16 Giving evidence on behalf of the bank are three bank officers,
Rajandeeran, Devi

Nambiar and Satish Chandra. Rajandeeran testified that in April 1987 he was
working in the

fixed deposit department of the bank and that whenever a customer came to
place deposits

he would handle the transaction. The specimen signature card signed by the
plaintiff was

produced and he confirmed that he verified the signatures of the plaintiff. He
said he

signed under the column 'verification signature' as a token that he had verified
the

signatures of the depositor. Normally, a depositor was required to sign the
specimen

signature card in front of him and he checked the identification documents. He
confirmed

that he issued the first receipt; it bore his signature and the signature of the
manager

of the bank. He would only issue the receipt after the cheque for the deposit had

been

cleared. He was the one who stamped the words 'under lien to us' on the deposit receipt.

He had seen the first letter of authority and had verified the signature against that _____ on

the specimen signature card. He also said that where a deposit was placed 'under lien' _____ to

the bank, the depositor would sign on the reverse side of the receipt. In this case, he

saw the signature on the reverse of the first receipt and he verified that signature

against the specimen signature. But he could not recall whether the depositor signed _____ it _____ in

his presence.

17 The next witness was Devi Nambiar who was the officer working in the fixed _____ deposit

department of the bank in September 1989. She testified that the written confirmation _____ of

the second deposit was a computer generated document. She confirmed that she

instructed

the document to be prepared with the words `under lien to us' as stated there and she

signed against those words. This was done pursuant to a request by the customer and she

had the letter of authority. She also verified the signature there against that in the

specimen signature card. She further said that the bank did not issue the written confirmation of deposit before the cheque for deposit was cleared.

18 The third officer of the bank who testified is Satish Chandra, senior manager of the

bank. His testimony was not of much assistance and was essentially on the practice of the

bank. One salient point he testified with regard to the practice was that where a deposit

is charged or given as security to the bank the depositor would be required to sign the

deposit receipt on the reverse thereof and return it to the bank. The first receipt

(for

the first deposit) was in the bank's possession after June 1987 with the reverse thereof

bearing the signature of the plaintiff.

19 The bank also called Mrs Ng Gek Kwee, the senior scientific officer of the Department

of Scientific Services. She testified that she examined the signatures on the following

documents:

20 (a) the first letter of authority, marked `MR 75';

21 (b) the second letter of authority, marked `MR 76';

22 (c) the first receipt (for the first fixed deposit) with a signature on the reverse

side thereof, marked `MR 77';

23 (d) five sheets of paper containing specimen handwriting of the plaintiff, marked `MR

78', and

24 (e) five sheets of paper containing specimen signatures of the plaintiff,
marked `MR

79'.

25 She prepared a report which was tendered. Her conclusion was that the
writer of the

specimen signatures and handwriting in `MR 77 to MR 79' made the signatures
on `MR 75 and

MR 76'. Mrs Ng in her evidence was very positive in her conclusion. She said
that there

were six categories of conclusion, and in this case her conclusion was of the
highest

level.

26 On a balance of probabilities, I found that the two letters of authority
dated 10 June

1987 and 12 December 1989 were respectively signed by the plaintiff. The
letters of

authority authorised the deposits or any renewal thereof to be held by the bank
as

security for the account of Consmech. At all material times Consmech was run

and operated

by Krishnan who is the plaintiff's nephew. From the evidence it appeared that Krishnan was

close to her at the material times. He came from India and stayed with them, and after her

husband had passed away he formed Consmech which took over the business of her late

husband. Her daughter and her late son were shareholders of Consmech, and her daughter was

a director. Her daughter also gave a personal guarantee in favour of the bank to secure

the account of Consmech.

27 When the first deposit was placed with the bank, Krishnan assisted her in withdrawing

her moneys from United Commercial Bank Ltd and depositing the same partly with the

defendant bank and partly with the Bank of India. She was brought to United Commercial

Bank Ltd to withdraw the money and to the defendant bank and the Bank of India to place

the deposit. On that occasion, she did visit the bank and there was no dispute that she

signed the necessary documents for opening the bank account. There was also no dispute

that she signed the specimen signature card at the time. The deposit receipt was issued

soon thereafter. There was no dispute that shortly thereafter, in June 1987, the first

letter of authority and the first receipt were delivered to the bank. That first receipt

had since then remained with the bank. The first receipt on the reverse side contained her

signature. Originally, it was not her case that that signature was not hers. She did not

say so in any document, e.g. letters or pleadings. She did not say so in the

examination-in-chief. Only in the cross- examination, following her evidence that she had

never received the first receipt, did she say that that signature was not hers. That, in

my view, was an afterthought. She said that merely to render her evidence consistent with

what she had said earlier. Counsel for the bank submitted, and I agreed with her, that the

plaintiff had, long before the trial, copies of all the relevant documents, namely, the

letters of authority, the first receipt and the report of Mrs Ng Gek Kwee, and she had

never disputed the signature on the reverse side of the first receipt until the

cross-examination. In the circumstances, I found it difficult to accept her evidence that

the signature on the reverse side of the first receipt was not hers.

28 The plaintiff, who gave evidence before me, is not an illiterate or ignorant lady. In

giving her evidence, she was quite perceptive. She reads English and writes English though

she gave evidence in Tamil. I am sure that when the deposit was placed with the defendant

bank, the first receipt must have been issued to her at that time or soon thereafter. She

must have had it and knew exactly what was it. If the deposit receipt had not been issued

and had been missing and continued to be missing without her consent, she would have made

enquiry with the bank or written to them for it. The deposit was for a period of one year

maturing on 29 April 1988 and subsequently that deposit was renewed successively for two

years. In my view, she must have known that the deposit was held by the bank as security.

From the documents produced, it appeared that the bank had on few known occasions at least

sent copies of confirmation receipt of the deposit to the plaintiff which bore the words

`under lien to us'. No objection or query had been raised by the plaintiff. Her explanation was that she did not receive the documents; but the documents were sent _____ to _____ the _____ addresses she gave to the bank. I found her evidence difficult to accept.

29 In September 1989, she withdrew her money from the Bank of India and redeposited _____ the

amount with the defendant bank. Krishnan again brought her to the Bank of India _____ to

withdraw the money, but she said he did not bring her to the defendant bank and she _____ gave

the cheque to Krishnan to deposit it with the defendant bank on fixed deposit. Her _____ reason

for withdrawing the money from the Bank of India and depositing the same with the

defendant bank was unclear. My inference is that at that time the defendant bank required

further security from Consmech and she agreed to withdraw her money then placed _____ with _____ the

Bank of India and deposit it with the defendant bank to provide the latter with further

security for the account of Consmech. It might well be that she was persuaded to do so by

Krishnan. Although she had no interest in Consmech, her children had substantial interest

in the company. According to the search made with the Registry of Companies her children

held majority shares in Consmech. It is true that on the date of the second letter of

authority, i.e. 12 September 1989, she was in India. But from the totality of the evidence

adduced it appeared to me that the second deposit was made with the bank and the documents

were signed before she left for India. My inference is that she must have signed the

second letter of authority before she left for India and left it with Krishnan to deliver

it to the bank.

30 It was not disputed that the cheque for the second deposit was handed to the bank on or

soon after 4 September 1989. Devi Nambiar was then the officer in the fixed deposit

department and her clerk prepared the written confirmation of deposit which was a computer

generated document. It was dated 12 September 1989 and her explanation was that it would

take about seven days to clear a US Dollar cheque, and that the bank would not issue a

confirmation of deposit before the cheque was cleared. Hence, the confirmation of deposit

was dated 12 September 1989. At that time the second letter of authority had been

delivered to the bank which on the face of it bore the signature of the plaintiff. Devi

Nambiar testified that she verified the signature against the specimen signature card and

she was the one who authorised the endorsement to be made on the confirmation

that the
deposit was 'under lien' to the bank.

31 All this circumstantial evidence and the clear and positive evidence of
Mrs Ng Gek Kwee
led me to the conclusion that the two letters of authority must have been signed
by the
plaintiff. I rejected her evidence that she did not sign the documents. I held that
she
did.

32 It was contended on behalf of the plaintiff that the two letters of authority
covered
only the first and second deposits respectively and since these two deposits had
merged
and combined into one deposit, the two letters of authority did not bite. The
short answer
to this argument is that this point was not pleaded in the statement of claim and
it was
therefore not open to the plaintiff. Assuming that it was available, it still failed.
It

was accepted by the plaintiff that the combined deposit was the cumulative total of the

first deposit and the second deposit. This consolidated amount was a renewal of the two

deposits and fell within the terms of the letters of authority.

33 It was suggested that the bank had committed a breach of the duty as banker in that the

bank was negligent in accepting the letters of authority without ensuring that they were

properly signed by the plaintiff in the presence of someone else. I do not see how this

breach, assuming there was a breach, would assist the plaintiff in her claim against the

bank. Once it was accepted that the plaintiff did sign the two letters of authority, it is

immaterial whether or not she signed them before an officer of the bank.

34 Lastly, it was argued that in the circumstances of this case the bank should for its

own protection have insisted that the plaintiff take independent and legal advice,
and the

bank had failed to do so and further that the bank had also failed to explain the
nature

and effect of the letters of authority to the plaintiff. Again, this point was not
pleaded

in the plaintiff's statement of claim; it was not part of her case. It was therefore
not

open to counsel for the plaintiff to raise this argument.

L P Thean JA

N Sreenivasan with Chua Swee Leen for the plaintiff
Michelle Rasanayagam for the defendant
