IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 194

Suit 1479/1993

Between

K S Oriental Trading Pte Ltd

… *Plaintiff*

And

Chang Hon Kong
Tan Choon Wann

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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K S Oriental Trading Pte Ltd v Chang Hon Kong and Another

[1996] SGHC 194

Suit 1479/1993
Warren Khoo L H J
05 September 1996

Between

K S Oriental Trading Pte Ltd

... Plaintiffs And

1) Chang Hon Kong

2) Tan Choon Wann

... Defendants

Citation:	Suit No. 1479 of 1993
Jurisdiction:	Singapore
Date:	05:09:1996
Court:	IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE
Coram:	Warren L H Khoo J
Counsel:	Mr Bevin Netto , Mr Ronald Choo for Plaintiffs
	Mr Tan Tee Jim , Mr Jason Chan for Defendants

Judgment:

Oral Judgment

1. I have considered the able arguments mounted on both sides on the preliminary issue. I am clearly of the view that the guarantee provided by the defendants is an undertaking of a primary liability to pay on demand the sum of US$1.46m or such part of it as may be demanded. Cl 1 provides for such payment "notwithstanding any dispute or difference which may have arisen" under the sale contract. Cl 3 reinforces cl 2 by providing to the effect, inter alia, that the guarantors, when deciding whether a liability to pay has arisen, are not to inquire into the respective rights and obligations of the parties to the sale contract. In other words, they are not to be concerned with them. They are also not to be concerned with the reason for, or the circumstances under which, the demand has been made. The overwhelming effect, on a fair and proper construction of the document, is that it is, as I said, an undertaking of a primary liability to pay on demand.

2. Counsel for the defendants points out various words here and there in the guarantee which he says are linked, if I may fairly use the word, to provisions in the sale contract. This linkage, he says, is an indicator of the guarantee being one for a secondary liability, i e a liability arising only on default by the principal debtor under the sale contract. I only need to say that since the guarantee was given in conjunction with the sale contract, references to the provisions of the sale contract are to be expected. But such references, in the absence of any express provisions to that effect, cannot turn the guarantee into one for a secondary liability. Nor can they give rise to that by implication. The Barclay Mowlem case referred to is of no assistance. There is no provision in the guarantee before us similar to cl 5.6 in that case which ties the liability under the guarantee to a liability under the main contract. In fact, not only is there no

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such linkage here, there are, on the contrary, provisions, particularly in cll 2 and 3, which expressly deny it.

3. Counsel for the defendants also points to words in various parts of the document which he says are words commonly found in a guarantee in respect of a secondary liability. He refers in particular to cl 5 (to the effect that no variation of the sale contract would release the guarantors from liability under the guarantee). He says that these provisions are indicative of a guarantee in respect of secondary liability. My comment on that is that these provisions are apt, or equally apt, to emphasise the thrust of the undertaking as one independent of the sale contract. They are incapable of over-riding the predominant effect of the document as a whole as an undertaking to pay on demand independently of anything under the underlying contract.

4. Since there is no dispute that a demand was made, it follows that the defendants were, and are, liable to pay the sum of US$1.46m demanded. Judgment for that sum shall be entered, with interest at the rate of 8% per annum from the date of the writ, and costs.

(Warren L H Khoo)
< Judge >

Warren Khoo L H J

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Bevin Netto and Magdalin Netto for claimnants
Chan Hian Young and Leonard Goh for respondents

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