IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 159

Suit No 597 of 1995

Between

Advanced Microcomputers Pte Ltd

… Plaintiff

And

Regional (Far East) Electronics Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Advanced Microcomputers Pte Ltd v Regional (Far East) Electronics Pte Ltd

[1997] SGHC 159

Suit No 597 of 1995
Choo Han Teck JC
07 June 1997

Judgment:

GROUNDS OF DECISION

1. This was an action by the Plaintiff company for the repayment of a sum of $250,000 being the balance of a loan to the Defendant company. The Plaintiffs were at all material times a company carrying on the business of selling computer products and components. The Defendants were at the material time carrying on a similar business, but was also an authorized distributor of SGS-Thomson Microelectronics Pte Ltd, a major manufacturer of computer components.

2. The Defendants' shareholders and directors were Koh Keng Hin and his wife Heng Kwee Choo. The majority shareholder and managing director of the Plaintiff company was Ng Kim Siah. His wife Heng Jee Lim was also a director of the company. Koh testified that he had known Ng "since the late 1980s".

3. It was not disputed that a loan of $500,000 was advanced on 27 May 1994 in two cheques of $120,000 and $380,000 respectively, made payable to the Defendants. The cheques were handed over to Koh by Ng at Ng's office. Koh's assistant Soh Beng Guan was also present. The cheques were subsequently banked into the Defendants' bank account. The first cheque ($120,000) was issued from the Plaintiffs' account with the Overseas Union Bank Ltd and the second cheque ($380,000) was from Ng Kim Siah's personal account also with the same bank. Ng's evidence was that the Plaintiff company did not have sufficient funds at the time and he therefore, drew out a personal cheque, but the intention of the parties was that it was to be a loan between the two companies. Accordingly, the Plaintiffs' accounting records reflected the sum of $380,000 as an advance from Ng to the company.

4. In exchange, two post-dated cheques of $200,000 and $300,000 from the Defendant company were given to the Plaintiffs. The first cheque was eventually presented for payment and was honoured. At the request of Koh Keng Hin the Plaintiffs returned the second cheque to Koh in exchange for six post-dated cheques of $50,000 each. Evidence was not led in this point but it is obvious that this exchange was to enable the Defendants to repay the balance by instalment. The first cheque cleared but the rest were not. Koh was called as a witness and testified on behalf of the Plaintiffs. He said that the remaining cheques could not clear because his wife Heng Kwee Choo had subsequently obtained a court order requiring two signatories to the Defendants' cheques. The six cheques given to the Plaintiffs were signed by him solely before that order was obtained.

5. The Defendants claimed that the loan was a personal loan by Ng Kim Siah to his good friend Koh Keng Hin or, alternatively, to Koh's new company called

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Regional Electronics Pte Ltd. As a further alternative, it was alleged that the loan was an illegal loan because it contravened the Moneylenders Act, Cap 188. I shall deal first with the argument that the loan was given by the Plaintiffs to Koh's new company. Regional Electronics (the new company) was a company incorporated by Koh without his wife as a shareholder or director. The name of this company is very similar to that of the Defendants except that the words "(Far East)" were not part of the name. The basis for the allegation that the loan was for this company and not the Defendants was that one of the Plaintiffs' payment vouchers described the payee as "Regional Electronics Pte Ltd" but had the letters "F.E." (obviously to mean "Far East") inserted as an addendum between the words "Regional" and "Electronics". This allegation is of no merit whatsoever as Heng Kwee Choo herself admitted in her affidavit that confusion often arose because the Defendant company had been mistaken for Koh's new company before. What is more important is that the cheques were addressed to the Defendants as payee and they were paid into the Defendants' account accordingly.

6. The second argument by the Defendants was that the loan was made to Koh personally. There was no evidence to support this allegation. Ng Kim Siah and Koh Keng Hin both testified that the loan was made between the two companies. They were hardly cross-examined on this allegation, and no evidence was led or adduced to show what happened to the money after it was paid into the Defendants' account. The evidence of Koh and his assistant Soh Beng Guan was that the Defendants needed money at that time to reduce their indebtedness to SGS-Thomson. Soh stated under cross-examination that after the loan was given the Plaintiffs continued business with the Defendants and made some purchases. He said that at that time the Plaintiffs were not a big customer, but they felt that it could develop into one. That might not have come to pass, but I

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am satisfied that that was the hope of the parties at that time. I find that there was no evidence sufficient to contradict this. Soh was *au fait* with the circumstances of the Defendant company at the material time and he was a witness whose evidence I accept as being truthful. Furthermore, it seems most unlikely that Koh would have asked Soh to accompany him if he had only wanted to borrow the money personally. It would require some speculation to the effect that Koh was acting with guile and cunning to deceive Ng Kim Siah (using Soh as a prop) to lend him the money. Soh also stated under cross-examination that Ng did not impose any conditions to the loan which Koh promised to repay within two or three months.

7. Ng was cross-examined on the occasion when the Plaintiffs gave the Defendants a $100,000 standby letter of credit. Koh was not cross-examined on this point. Ng explained that SGS-Thomson had asked the Defendants to secure more credit facilities and as the Plaintiffs had not fully utilised their own facilities, it persuaded its bank to allow the Defendants to use that facility with the Plaintiffs acting as guarantor for the Defendants. Ng stated that the Defendants were to bear all the bank charges and bank interests should it use this facility. This point was not pursued any further.

8. It was submitted by counsel for the Defendants that there was no evidence to show that the sum of $380,000 was not a personal loan from Ng Kim Siah and not the Plaintiffs "other than the oral evidence of the Plaintiffs' directors and the internal documentation". With respect, counsel failed to appreciate the evidential burden of proof that lay with the Defendants when it alleged that the loan was not made to the Defendants but to Koh personally. The mere assertion that the loan was made on the basis of a "personal relationship" and "mutual trust between Koh Keng Hin and Ng Kim Siah" is sufficient to discharge this

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burden. I find that the loan was one that was made by the Plaintiff company to the Defendant company.

9. The main defence of the Defendants was that the loan was an illegal moneylending transaction. The loan itself was not disputed by the Plaintiffs or Koh, but they denied that any interest was paid for these loans. The Defendants relied on a cheque of $9,000 and two cheques of $5,000 each paid from the Defendants' bank account by Koh to the Plaintiffs in August, September and October 1994 as proof of payment of interest. The evidence of Ng and Koh was that these cheques were given to the Plaintiffs by Koh in exchange for cash as Koh found it more convenient than going to the bank. Koh's evidence on this point was somewhat incoherent and he appeared a little embarrassed when giving evidence on this point. Although I find him to be a generally truthful witness, his evidence on this point was not entirely satisfactory. If interest was charged, the Moneylenders Act creates a presumption of moneylending. However, the mere charging of interest does not render the loan transaction illegal. What is prohibited under the Act is the carrying on of a business of moneylending. In determining whether a person was carrying on such a business, the court will take into account whether interest was charged. If no interest was charged then it can hardly be called a business since no profits would have been made.

10. If interest was charged, the court may then consider the amount of interest charged. The higher the rate the more a court may incline towards finding that the lender was an unlicensed moneylender carrying on such a business. In this case, the undisputed evidence was that there was no deduction of interest "upfront". This does not exclude an agreement between the parties that interest was chargeable, but it is relevant in determining whether this was a typical

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moneylender's way of doing business. It is also relevant, in this particular case in that it does explain the embarrassment of Koh when he gave evidence on this point. He said that it was his own decision to give the three cheques to the Plaintiffs in exchange for cash because he "felt bad that the Defendants were unable to repay the principal sum". The loan was made in May but the three cheques were given only for August, September and October. This was consistent with Koh's evidence that at the time the loan was advanced there was no agreement to pay any interest. I can only come to the conclusion that because the Defendants were unable to pay the principal sum, Koh felt obliged to defray the cost to the Plaintiffs in giving the loan. There was no evidence of any other interest payments other than these three cheques. Furthermore, the rate of interest cannot be said to be manifestly exorbitant. Even the Defendants' counsel conceded that in this case it was no more than 24% per annum. Hence, even though I find that there were three payments of interest, these payments were not characteristic of that charged by a person carrying on a business of unlicensed moneylending.

11. It is also significant that the only security taken by the Plaintiffs for the loan were two cash cheques for the exact amount of the loan. This is consistent with the Plaintiffs' evidence (and that of Koh) that it was a loan to cement their business relationship and not in the course of a moneylending business.

12. There was also no dispute that the Plaintiffs did not harass the Defendants or Koh for payment. However, Koh's wife Heng Kwee Choo testified that on 29 November 1994 Ng Kim Siah telephoned her and told her that her husband owed him $250,000 with interest at $5,000 a month. She made a police report and in that report she stated that Ng said that he would be "nasty" if he was not paid. She made the report on the advice of her solicitors. Ng denied that he had

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threatened her. This point was hardly pursued by counsel for the Defendants. I take into account Ng's denial, and the fact that apart from this one instance, made long after the debt was due, there was no other "harassment". There was no evidence or submission as to what was meant or understood by the word "nasty".

13. Although Koh was estranged from his wife, he would still stand to gain if the loan was found to be an illegal transaction. I am left to conjecture that he denied that the transaction was a moneylending transaction purely to spite his wife. Considering the evidence as a whole, I am unable to come to that conclusion.

14. The Defendants referred to the sale of a piece of property belonging to Koh to Heng Jee Lim in April 1995 for $780,000. Counsel submitted that this was a disguised payment of part of the loan because the property was sold at an undervalue. The Defendants produced a valuation by Knight Frank Pte Ltd stating that the property was valued at $850,000. However, this valuation was done in June 1995. The sale price of $780,000 was based on a valuation of another valuer, Cheong Koon Seng Auctioneers and Valuers Pte Ltd in November 1994. The evidence of Low Kin Hon of Knight Frank Pte Ltd was that "if the said property was sold at $780,000 on 7th April 1995, the sale price appeared low". There are bound to be discrepancies between the opinion of experts in valuation, and without more, an opinion that the price appeared low cannot be stretched to the conclusion that it was not a genuine sale at an objectively ascertained value. If, as it was, that at the time of the sale of the flat the Defendants were still owing $250,000 to the Plaintiffs then the Plaintiffs would have lost out because Koh had departed with a valuable security for less, unless, which was not proved, the sale price was so much below the market

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value as to make it worth the while for Ng or his wife to acquire the flat at that price and at that time. Otherwise, as it appeared, Ng's wife would have purchased Koh's property at an insignificant discount when half the principal loan had not been repaid. All these facts indicate the improbability of the Defendants' allegation of the Plaintiffs carrying on an unlicensed moneylending business. Heng Jee Lim's evidence which was hardly shaken under cross-examination was as follows:

"Mr Koh had, on or about December 1994, approached both Mr Ng and myself to inquire if we were interested in purchasing the property known as 105 Highland Road, Highland Condominium, Singapore 549179, ("the property"). Mr Koh then quoted us a purchase price of $800,000.

I was I fact interested in purchasing a piece of property situated in that locale but I found the price quoted by him to be too high. I therefore made a counter-offer to purchase the property at $700,000 but my counter-offer was rejected by Mr Koh.

Thereafter, no more was said about the property until sometime on or about March 1995, when Mr Koh approached me with another offer to purchase the property. This time he offered to sell the property to me for $780,000. I proposed that a valuation be done but he said that he already had a valuation done and he produced a valuation report prepared by Cheong Koon Seng (CKS) Auctioneers & Valuers Pte Ltd (CKS) dated 19th November 1994 which valued the property at $780,000.

We then both agreed that the purchase price be fixed at $780,000 in reliance on the CKS valuation."

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15. It was not disputed that the valuation report was obtained by Koh and not by Ng or his wife. It was also accepted that at that time Koh was in financial difficulties and eventually became a bankrupt. In those circumstances, and in the absence of any real challenge to the evidence of Heng Jee Lim, whose evidence I accept, it was not improbable that Koh was prepared to sell his property at valuation even if that price might be a little lower than if he had been more patient or determined to sell at a higher price.

16. For the reasons above, I find that the Plaintiffs were not carrying on the business of moneylending, and, accordingly, I allowed its claim.

Choo Han Teck

Judicial Commissioner

Singapore, 7 June 1997.

Choo Han Teck JC

Leow Chiap Seng and Tan E-Fang [Sim Hill Tan & Wong] for the plaintiffs
Cheong Aik Chye and Tan Tuan Wee [Judy Loke & Cheong] for the defendants

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