IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 263

Suit No 1511 of 1992

Between

Indian Bank

… Plaintiff

And

Pasupathy Mangalaeswaree
Amar Bushon Nandy
Hedtamma D/O Karuppiah
Sundari D/O Karuppiah

… Defendant

GROUNDS OF DECISION

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Indian Bank v Pasupathy Mangalaeswaree and Others

[1997] SGHC 263

Suit No 1511 of 1992
Lim Teong Qwee JC
23 October 1997

1 **Judgment:**

2 1. This claim arises out of a loan given by the plaintiff bank to its customer Greenseas Shipping Co Pte Ltd ("company"). The first three defendants are three of the guarantors of the company's liabilities to the bank. The fourth defendant was appointed to represent the estate of her late father Karuppiah s/o Narayanan. She is also an executrix appointed by her father's will. The late Mr Karuppiah was also a guarantor of the company's liabilities to the bank. The company having defaulted this action was brought against the first three defendants and the estate of the deceased on the guarantee. Before me the action proceeded only against the estate and on 2 June 1997 I gave judgment for the plaintiff for the amount claimed and costs.

3 ***Statement of claim***

4 2. Paragraph 3 alleges an agreement dated 2 July 1990 by which the bank "extended to the company a loan facility" not exceeding US$3.6m to finance the purchase of a ship. It is not disputed that the loan has been drawn down and

para 6 alleges default in the company's repayment obligations resulting in the whole of the loan becoming repayable as alleged in para 4.

5 3. Paragraph 5 alleges:

6 "By a Guarantee dated 11th June 1990 ... [the first three defendants and the late Mr Karuppiah], together with others, jointly and severally guaranteed the payment of all sums of money from time to time and at any time owing to the [bank] ...."

7 Paragraph 9 alleges demand made on the first three defendants and the late Mr Karuppiah and their default in payment.

8 ***Defence***

9 4. Paragraph 9 alleges:

10 "It was the intention of all the parties in the instant action that all the 'Guarantors' named in the said page of the said Agreement were to jointly and severally guarantee the said loan transaction."

11 I assume that "all the parties" is a reference to the bank, the first three defendants and the late Mr Karuppiah. The "Guarantors" named in the "said page of the said Agreement" are ten persons associated with the company including the first three defendants, the late Mr Karuppiah, his wife Mrs K Kanthimathi and a Mr Sambasivam. The "said Agreement" is the loan agreement dated 2 July 1990 and the "said page" is p 2 which contains the definition of "Guarantors" and other expressions.

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12 5. Paragraph 11 alleges that the bank managed to secure the signatures of only nine of the ten Guarantors and para 12 alleges:

13 "The said signatures are set out in 4 separate standard form guarantees at all material times, with no express references in the said forms or the said Agreement linking them together."

14 It is not disputed that the first three defendants and the late Mr Karuppiah signed one guarantee, three of the other guarantors signed a second guarantee and one of the guarantors signed a third guarantee all dated 11 June 1990. Mr Sambasivam signed a fourth guarantee on 25 June 1990 but the guarantee is not dated. All the guarantees are identical except as to the names of the guarantors and their signatures and in Mr Sambasivam's case the attestation of a witness. Mrs Kanthimathi did not sign any guarantee at all as alleged in para 14.

15 6. Paragraph 17 alleges:

16 "The 4th Defendant thus avers that the said Guarantee is void in law and unenforceable because one of the said Guarantors did not append her signature and that it was not duly executed or at all."

17 Other defences are raised and there is also a counterclaim but the counterclaim has been withdrawn as I was informed from the bar and counsel did not pursue these other defences. Paragraph 17 raises two distinct defences. The first is that the guarantee sued on is unenforceable because Mrs Kanthimathi did not sign the guarantee sued on or any guarantee at all. The other is that the guarantee sued on has not been duly executed or at all but this defence was not pursued.

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18 ***Reply***

19 7. In its reply the bank alleges that the intention that all ten Guarantors, including Mrs Kanthimathi, were to be guarantors was contained in the agreement of 2 July 1990 which was an agreement between the bank and the company and the guarantors were not privy to it. It is apparent that the bank is not denying the intention of "all the parties in the instant action" alleged in para 9 of the defence.

20 8. The bank further alleges in para 4:

21 "... the requirement for Mrs K Kanthimathi to execute the guarantee was waived by the Plaintiffs on the request of the directors of the Company as well as a written request from Karuppiah s/o Narayanan by letter dated 12th July 1990 to the Plaintiffs. In the premises, the 4th Defendant is now estopped from claiming that the Guarantee was not valid as Mrs K Kanthimathi had not executed the same."

22 ***Intention that all guarantors jointly and severally guarantee the loan***

23 9. By letter dated 2 April 1990 the bank advised the company of its in principle approval of a loan of up to US$3.6m on certain terms and conditions. These terms and conditions included the "personal guarantees of all directors and Mr Kuppusamy to be given for entire facility". In a letter dated 5 April 1990 signed by the late Mr Karuppiah and the second defendant Mr Nandy the company referred to the bank’s letter of 2 April 1990 and requested the bank’s "sanction and disbursement of loan". In reference to the terms and conditions as to personal guarantees the letter said:

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24 "... as regards approval from RBI/Govt of India in respect of guarantee by Indian resident directors and Mr T S Kuppuswamy, we confirm that steps are being taken to comply with the same. As it may take sometime for the clearance from the RBI/ etc., *we request your acceptance of the guarantees by the said persons which will be lodged with your Central office and do not hold disbursement as guarantee is being extended by all the persons in their personal capacity* (italics added)."

25 "RBI" is a reference to the Reserve Bank of India. The bank is constituted in India and the letter was addressed to its branch in Singapore.

26 10. No attempt was made to suggest what the italicised part of the letter means but I think it is clear that the company envisaged that the personal guarantee of the guarantors required by the bank might be contained in one or more forms of guarantee. On 13 June 1990 the directors passed a resolution accepting the bank's offer of credit facilities under the terms and conditions of the bank's letter of 2 April 1990. The resolution was confirmed by Mr Nandy and the late Mr Karuppiah.

27 11. The company and the bank entered into a loan agreement dated 2 July 1990 in respect of the loan. The agreement provides for the company to "cause and procure the Guarantors to execute the Guarantee" in favour of the bank. "Guarantors" is defined as the ten persons and "references to such expression shall include any one or more of them" and "Guarantee" and "Guarantees" mean "any each or all (as the context may require) the joint and several guarantees of the Guarantors" in form and substance approved by the bank. The loan agreement was signed by the late Mr Karuppiah on behalf of the company.

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28 12. Mr Nandy said that he signed the guarantee sued on for the loan together with the first and third defendants and the late Mr Karuppiah. He said that before the loan was approved it was decided "at company level" that all ten persons were required to sign a personal guarantee to the bank. He referred to the loan agreement dated 2 July 1990 and the definition of "Guarantors" for the identity of the ten persons. He did not say if any of these persons other than himself participated in the decision as to the personal guarantee or was aware of it. He did say though that in relation to the loan the decision making was left to the late Mr Karuppiah and a Mr Gobal who was the chief executive officer of the company. He also said that the late Mr Karuppiah informed him that the bank would only grant the loan if the ten persons signed a personal guarantee form in addition to certain other securities. Mr Nandy's evidence was not really challenged.

29 13. On the evidence before me I find that it was agreed between the company and the bank that the loan be secured by the joint and several guarantees of all the ten persons named as the "Guarantors" in the loan agreement dated 2 July 1990. There is no evidence that either the first or the third defendant was aware of the agreement or of the decision made "at company level" that they and eight other persons were required to sign a personal guarantee to secure the loan and it has not been proved that it was their intention that all ten guarantors should guarantee the loan. Both Mr Nandy and the late Mr Karuppiah were aware of the bank's requirement as to the guarantees to be given by all the ten guarantors named in the loan agreement and the late Mr Karuppiah also knew by the time he signed the loan agreement that the guarantees were joint and several guarantees.

30 14. When the loan agreement was made it was the intention of the late Mr Karuppiah that joint and several guarantees be signed by all the ten

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guarantors and I find accordingly. It was certainly the bank's intention also. The allegations in para 9 of the defence have not been proved although they have not been specifically denied but I think it is sufficient for the purpose of the defence of the fourth defendant that I find that it was the intention of the bank and the late Mr Karuppiah that all the ten persons were to jointly and severally guarantee the loan.

31 15. The company gave notice to the bank to draw down the loan and by its letter dated 6 July 1990 the bank drew attention to a number of matters still outstanding. In particular the bank said that the personal guarantees of Mrs Kanthimathi and Mr Sambasivam were still to be furnished. In its reply the company in a letter dated 9 July 1990 signed by the late Mr Karuppiah dealt with all the outstanding matters and in respect of the personal guarantees said that "the personal guarantee of Mr Sambasivam had been forwarded to [the bank] with the exception of Mrs K Kanthimathi which is being attended to".

32 16. The late Mr Karuppiah knew and intended as I have found that all the ten guarantors guaranteed the loan but he also knew and envisaged that all the ten guarantors need not sign on one form of guarantee. He knew that he and three others signed one form. He knew that Mr Sambasivam signed another form. He knew that only Mrs Kanthimathi had not signed a guarantee and so he would have known that the remaining four out of the ten persons must have signed at least one or more forms of guarantee. All the guarantees were expressed to secure the same liabilities.

33 17. Mr Kanisan submitted that the intention of the late Mr Karuppiah and the other three who signed the guarantee sued on was that all the ten persons had to sign the guarantee also. If the bank had to rely on other forms of guarantee signed by the other persons then it had to show that all the forms of guarantee

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could be read together as the guarantee sued on. He referred to *Indian Bank v Raja Suria & Ors* [1993] 2 SLR 497. However Mr Kanisan conceded that in this case if I found that the late Mr Karuppiah knew that other forms of guarantee were signed by the other persons and all the guarantees were intended to secure the same debt then all the forms of guarantee would be linked. They could be read together as the guarantee sued on. I have indeed so found and it is not necessary to consider this defence any further. I think though that I should say something about the *Indian Bank v Raja Suria & Ors* defence.

34 18. In *Indian Bank v Raja Suria & Ors* the bank sued seven persons under two forms of guarantee. One form was signed by the first six defendants only although it named all the seven defendants as the guarantors. The other was signed by the seventh defendant only. Lai Kew Chai J (giving the judgment of the Court of Appeal) said at p 499 that as pleaded in the statement of claim the bank's position was that the two guarantees were in fact one contract of guarantee between itself and the seven defendants and that this remained the bank's case on appeal and in the court below. At p 503 he said:

35 "The first guarantee recited that it was the joint and several guarantee of the seven defendants while the second stated that it was the guarantee of the seventh defendant. Neither was there any other evidence to show that the two were related. There was no evidence that the parties intended that the defendants' guarantee be given in two separate documents."

36 The bank failed in its action and its appeal was dismissed. In the case before me not only did the late Mr Karuppiah envisage that the guarantee of the ten persons could be given in more than one document he knew that it was in fact so given by nine of them. There was another ground on which the bank would have failed. At p 504 Lai Kew Chai J said:

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37 "Our decision was not merely based on the bank's case as pleaded. Even if the action were pleaded as being based on the first guarantee and relief was only being sought against the second and the fourth respondents, the action would still have failed because the intention of the parties was that all seven defendants would sign *one* (emphasis added) document."

38 The second and fourth respondents were the fourth and sixth defendants in the action. In the case before me it was not the intention of the parties that all the ten persons had to sign on only one form of guarantee.

39 19. It was not disputed that as alleged in the defence Mrs Kanthimathi did not sign any guarantee at all. Mr Kanisan did not pursue this defence. On 12 July 1990 the company wrote to the bank to draw down the loan. In its letter signed by the late Mr Karuppiah it said "Regarding the guarantee of Mrs K Kanthimathi, please see letter attached." The letter attached was a letter from himself to the bank in which he requested that the bank's requirement for Mrs Kanthimathi's guarantee be waived. The bank acceded to his request and subsequently the loan was drawn down. Whether the fourth defendant is estopped from alleging that the guarantee sued on was not valid as Mrs Kanthimathi had not signed that guarantee or any guarantee at all as alleged in the bank's reply to the defence or the condition precedent to the late Mr Karuppiah's liability has been waived by agreement between him and the bank the result is that the defence founded on the absence of any guarantee in writing signed by Mrs Kanthimathi fails.

40 20. In the result I gave judgment for the bank for the amount claimed and costs.

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42 Dated this 23rd day of October 1997.

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44 LIM TEONG QWEE

45 JUDICIAL COMMISSIONER

46 SUPREME COURT

Lim Teong Qwee JC

Yoga Sharmini Yogarajah and John Ho Hee Jung for the plaintiff
M P Kanisan for the fourth defendant

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