IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 282

Suit No 1160 of 1997, RA 279 of 1997

Between

Moscow Narodny Bank Limited

… *Plaintiff*

And

Fetim (Pte) Ltd

… *Defendant*

GROUNDS OF DECISION

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Moscow Narodny Bank Limited v Fetim (Pte) Ltd

[1997] SGHC 282

Suit No 1160 of 1997, RA 279 of 1997
Choo Han Teck JC
31 October 1997

Judgment:

1. The Plaintiff is a bank incorporated in the United Kingdom and carrying on business in Singapore. The Defendant is a company incorporated in Singapore. By a letter dated 22 May 1992 the Plaintiff offered credit facilities of up to $800,000 to the Defendant. Interest was payable at 1% with monthly rests. The only securities were a letter of comfort given by the Defendant's parent company in Sofia, Bulgaria, and a

mortgage over the Defendant's premises which was leased to them by the Jurong Town Corporation.

2. Clause 9 of the letter of offer stated as follows:

"PERIOD

Until further notice. Notwithstanding this, the Bank reserves its right to recall the facilities at any time at its discretion. On such recall all amounts then outstanding under this facility together with the accrued interest and any other

sums for which you are liable under this facility will be immediately due and payable without further notice or demand".

3. It was also provided in clause 14, *inter alia*, that that letter "supersedes all previous letters relating to the offer and terms & conditions of credit facility". The Defendant accepted the letter of offer in accordance with the terms of the offer. The Defendant had also passed a director's resolution as required. The resolution reads as follows:

"The Company accepts that the banking facilities offered by Moscow Narodny Bank Limited - (MNB) - Singapore Branch of 50 Robinson Road Singapore 0106 hereinafter called "the Bank" on the terms and conditions enumerated in the Bank's Letter of Offer dated 22 May 1992."

4. As at 8 June 1997 the Defendant owed the Plaintiff $634,112.34 under the loan facilities. By letter dated 9 June 1997, through their solicitors, the Plaintiff recalled the loan and demanded payment. The Defendant did not pay and the Plaintiff commenced proceedings by writ. It applied for summary judgment, but the Defendant was granted unconditional leave to defend. The Plaintiff appealed against that decision before me.

5. There is no dispute that the letter of 22 May 1992 as signed by the Plaintiff and Defendant stated that it constituted the entire agreement. The Defendant does not dispute the amount due as claimed, and on the face of the written agreement, there appears to be no defence to the Plaintiff's claim. However, the Defendant's managing director stated in his affidavit that the Defendant signed the agreement only because of a representation by the Plaintiff's officer Kuznetsov that the Plaintiff would "never recall the facilities at anytime at its discretion". Thus, the Defendant's counsel submitted that the first triable issue

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was whether the contract was entirely written or partly oral and partly written. Secondly, on the basis of the representation, is the Plaintiff prevented by the doctrine of promissory estoppel from recalling the facilities. Thirdly, the Defendant had been making regular monthly payments and was, therefore, not in breach of the agreement. It follows, he submitted, that there was no ground which entitled the Plaintiff to recall the facilities.

6. I shall deal quickly with each of these submissions in reverse order because I find that counsel's submissions became progressively weaker. It was not the Plaintiff's case that the facilities were recalled because the Defendant was in breach of one of the terms and conditions of the agreement. It was merely exercising its rights under clause 9, which expressly provides that the Plaintiff may recall the facilities at its discretion. In any event, there is no clear evidence that the Defendant had been paying all its monthly dues.

7. In respect of the second triable issue, I think that counsel had misunderstood the doctrine of promissory estoppel which has its roots in the renowned *Central London Properties v High Trees House Ltd [1947] 130* case. The general doctrine applies when a person had represented to another that he (the former) would not enforce his strict legal rights, and the latter, acted on that representation to his detriment. The doctrine of promissory estoppel is different from a misrepresentation that induced a party to contract. From the affidavit of the defendant company, it is obvious that the Defendant purports to rely on the misrepresentation as a defence although a plea of misrepresentation is normally pleaded as a cause of action. The affidavit of Jivko Velev of 28 July 1997 says expressly, that:

"[a]cting on the faith and reliance of the oral representations and/or warranties of the Plaintiff, the Defendant signed the written agreement dated 22 May 1992.

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The Defendant would never have signed the agreement of 22 May 1992 but for the oral terms and/or representations".

8. In such a case, the Defendant would be entitled to rescind the contract or claim damages for the misrepresentation. It asks for neither. In the defence filed on its behalf, it merely stated that the Plaintiff is not entitled to recall the facilities. To succeed, the Defendant will have to convince the court that the said representation (that the Plaintiff will not recall the facilities) became a term of the contract. Unfortunately, that argument runs straight into the path of clause 14 which stipulates that the 22 May 1992 agreement supersedes all previous letters. Counsel for the Defendant bravely submitted that the reference to previous letters means that oral representations are not affected. I think, on the contrary, that, *a fortiori*, they were.

9. I now deal with the crux of the Defendant's case against summary judgment, namely, that the agreement was partly oral and the oral terms included the said representation that the Plaintiff will not recall the facilities. Counsel submitted that the representation was made by the Plaintiff's Kuznetsov, but he had not sworn any affidavit to refute this allegation against him. By the same token, the person from the Defendant company to whom the representation was made (Yakimov) also did not swear an affidavit to support its allegation. What was stated in the affidavit of Velev is merely that Yakimov had informed Velev of the said representation. It is true that indirect evidence may be referred to in summary judgment proceedings, but the court is entitled to give it little or no weight after considering it in the context of all the affidavit evidence.

10. In this case, as early as 6 November 1995 the Plaintiff had put the Defendant on notice, albeit, not in the express way that it did in the writ, that the credit facilities were in danger of being recalled. Yet at no time did the Defendant refer

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or remind the Plaintiff of Kuznetsov's representation. In their letter of 6 November 1995 to the Defendant, the Plaintiff stated:

"This refers to your letter of 3.11.95. Apparently despite the various communications, there appears a need for further clarification with regards to the present status of the outstanding indebtedness of Fetim. As advised in our several letters and my telephone conversations with you on 5.10.95, Fetim's outstanding loan of S$797,000-00 approx. has been overdue for credit review since April 95. In order for the bank to consider a continuation of its lending relationship, certain conditions have to be met, - amongst which is the extension of the present lease of the factory which expires in 1998, and is legally charged to us as security. Other requirements to be observed have been communicated to you.

It is rather unfortunate that despite the ample time extended, we have as yet to receive a meaningful response to our requests. Consequently banking prudential practice (sic) compel us to request you to settle your outstandings in full".

11. Counsel for the Defendant explained that the Defendant did not refer to the oral representation earlier because the present managing director had just returned from Bulgaria, and he was not aware of the representation earlier since he was not the person who dealt with the Plaintiff. It seems to me that the Plaintiff's counsel would have as much pleasure in cross-examining the Defendant's witnesses as the Defendant's counsel would have in cross-examining the Plaintiff's.

12. The Defendant is, of course, entitled to try and prove that the contract was partly oral and partly written. However, the Defendant will face obvious difficulties in adducing parol evidence of the said representation if it cannot

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prove that the contract was partly oral and partly written. The Defendant's counsel submitted that s94(a) of the Evidence Act, Cap 97 applies and he would be entitled to adduce parol evidence through it. I do not think so. That provision reads:

"(a) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law".

13. The above provision allows parol evidence to be adduced in order to invalidate an otherwise valid agreement. It is not a provision to be used to patch gaps in an otherwise valid contract. That must be achieved by other means such as drawing upon implied terms. The only oral evidence that may be permitted in this case is evidence tending to prove or disprove the assertion that the contract was partly oral and partly written. Until that is established, oral evidence of the said representation is neither relevant nor admissible.

14. I am of the view that the defence appears lame. However, I will give the Defendant the opportunity of establishing its propositions at trial, but not without first providing a banker's guarantee to the satisfaction of the Plaintiff for the amount due. I regard the defence to be somewhat shadowy. A shadowy defence does not necessarily connote a defence of sinister birth, or one which is created deviously to thwart a deserving Plaintiff from obtaining swift justice. It includes, as in this case, a defence which appears palpably weak, but which, in the court's view, ought to be given the opportunity of development at trial.

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15. I, therefore, set aside the order granting unconditional leave to defend and granted leave to defend on the condition that the Defendant furnishes a banker's guarantee to the satisfaction of the Plaintiff in the sum of S$630,000 within four weeks, failing which judgment would be entered against the Defendant in terms of prayers 1 and 2 of the Summons-in-Chambers 4839 of 1997.

- Sgd -

Choo Han Teck

Judicial Commissioner

Singapore, 31 October 1997.

Choo Han Teck JC

Julian Andrew Wong [Shook Lin & Bok] for the appellant/plaintiffs
Lim Chong Boon [Derrick Ravi & Partners] for the respondents/defendants

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