IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 193

Suit 578/1997

Between

Chemlab International Pte Ltd

… Plaintiff

And

Lian Lam Sin

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Chemlab International Pte Ltd v Lian Lam Sin

[1998] SGHC 193

Suit 578/1997
S Rajendran J
02 June 1998

1 **Judgment:**

2 **GROUNDS OF JUDGMENT**

3 1. The plaintiffs were suppliers of plastic and printing materials. One of their customers was a company called Guan Heng Packaging Industries Pte Ltd ("Guan Heng Ltd"). As at 29 September 1992 Guan Heng Ltd owed the plaintiffs a sum of US$262,394.77 in respect of goods supplied. On 8 October 1993 Guan Heng Ltd was wound up on the petition of one of its creditors. The defendant was a director and major shareholder of Guan Heng Ltd.

4 **Pleadings**

5 2. The plaintiffs' claim against the defendant was that at the time of the making of the winding-up order the defendant had offered to indemnity and/or pay to the plaintiffs the whole of the debt due by Guan Heng Ltd in consideration of the plaintiffs not filing their proof of debt. It was further alleged that in keeping with the indemnity the defendant gave to the plaintiffs four cheques:

6 Bank Dated Amount

7 (a) OUB 12.8.94 S$3,000

8 (b) ICB 5.10.94 S$2,000

9 (c) ICB 9.12.94 S$2,000

10 (d) ICB undated blank

11 as part payments of the debt. The first three cheques were cleared on presentation but as the defendant failed to provide the amount and date to be inserted on the cheque the last cheque was not presented for payment.

12 3. Taking into account the total of the three cheques that were cleared, the plaintiffs claimed a sum of US$257,734.77 from the defendant under the alleged indemnity.

13 4. In his defence the defendant denied that he agreed to indemnity the plaintiffs. He admitted that he had issued the four cheques but claimed that these were repayments of a personal loan he had taken from Chua See Ka ("Chua") and had been drawn in favour of the plaintiffs on Chua's request (Chua was the managing director and major shareholder of the plaintiffs). It was pleaded in the alternative that if there was any agreement with the plaintiffs the agreement was void and/or enforceable in that:

> (a) it was a contract of guarantee and not a contract of indemnity and had therefore to be evidenced by a memorandum in writing; and
>
> (b) there was no consideration for the agreement.

14 **Plaintiffs' Evidence**

15 5. Chua testified on behalf of the plaintiffs that at the time of the making of the winding-up order, the defendant approached him with the request that the plaintiffs do not file their proof of debt with the Official Liquidator in respect of the amount that was due from Guan Heng to the plaintiffs. Chua testified that in consideration of the plaintiffs not filing the proof of debt the defendant indemnified the plaintiffs in respect of the debt due from Guan Heng and at different points of time handed to the plaintiffs the cheques listed above. He said that the last cheque was a blank cheque with only the signature of the defendant and that it was handed to him sometime after 9 December 1994 when he went to the office of Guan Heng together with a friend of his called Sharon Guo Xue-Fen. The defendant told him at that time that he was expecting to receive a large sum of money in a few days and would let Chua know what amount the defendant intends to pay to the plaintiffs.

16 6. In his evidence-in-chief, Chua alleged that he believed that the reason the defendant requested the plaintiffs not to file the proof of debt in respect of the amounts due to them by Guan Heng was connected to the fact that Guan Heng was wound up on the petition of a company called Donald & Mcarthy Pte Ltd. Chua testified that this company was owned by one Vinod Kumar and his wife and that the defendant was a close business partner of Vinod Kumar. It was not explained either in the course of testimony or in submissions by Counsel how this fact went towards establishing the plaintiffs' case. Nor was anything said as to how the defendant or Guan Heng would benefit if the plaintiffs did not file their proof of debt.

17 7. In his evidence-in-chief, Chua had said that the defendant had given the alleged indemnity at the time of the making of the winding-up order. In

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cross-examination, however, he told the court that the indemnity was given before the winding-up order was made. Pressed for greater precision, Chua was somewhat hesitant and replied that he thought that it was a month before the winding-up order.

18 8. Chua was also asked to be more precise about what was actually said between the two of them that led him to conclude that the defendant had agreed to indemnify the plaintiffs. Chua could not recollect the conversation but said that the defendant asked him to help as his company was going to wind up. When asked in what way the plaintiffs could "help", Chua replied, somewhat vaguely:

19 " The intention is so long as I can collect my money. Either by he himself or the company. "

20 Later on Chua said that at that time the defendant volunteered to give him a written guarantee that he would pay all Guan Heng’s debts to the plaintiffs. Chua, however, did not pursue that option since the defendant was a family friend and Chua said that he accepted the defendant’s word.

21 9. Chua was shown three vouchers that corresponded to the first three cheques mentioned above. The first voucher (D.1) was headed "Chemlab International Pte Ltd/Mr Chua See Ka". It was dated 8 August 1994 and gave particulars of the cheque number and date of cheque. The voucher had on it the words "payment of personal loan ... S$3,000" and it carried the recipient’s signature. Chua confirmed that the signature was his.

22 10. The second voucher (D.2) was dated 5 October 1994, headed "Chemlab International Pte Ltd" and carried the words "payment of personal

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loan ... $2,000" Chua was again asked to confirm that the signature against the words "Received by" on D.2 was his. Chua told the court that he was not sure if that was his signature.

23 11. The third voucher (D.3) was dated 9 December 1994. It was headed "Chemlab International Pte Ltd" and had the words "Being part-payment of personal loan ... S$2,000". In respect of D.3 too, Chua was unable to say if the recipient's signature that appeared therein was his. Chua added that he was not sure of the words "personal loan" because between him and the defendant there was no personal loan. When asked if it was his evidence that, when he signed the vouchers, the vouchers had not been filled in he said he could not remember and then added "Certainly the words 'personal loan' and my name should not appear", Chua denied that he had made a personal loan of $10,000 to Chua in 1993.

24 **Defendant's Evendence**

25 12. The defendant denied the plaintiffs' claim that he had agreed to indemnify the plaintiffs if they did not file a proof of debt with the liquidators of Guan Heng. He pointed out that even if the plaintiffs did not file proof of debt Guan Heng's accountants would have to disclose to the Receivers all amounts owed by Guan Heng and it therefore made no sense for him to request the plaintiffs not to file their proof.

26 13. The defendant claimed that around April 1993 when Chua visited him at his office he asked Chua for a personal loan of $10,000 as Guan Heng at that time was not doing well. Chua agreed and a few days later handed to him $10,000 in cash. Chua told the court that in view of Guan Heng's financial

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difficulties, he was unable to repay the loan. He could only begin to repay when, many months after Guan Heng had gone into liquidation, he started work in another company. The defendant testified that Chua asked the defendant to make the repayment cheques payable to the plaintiffs. As Chua was the managing director and the majority shareholder of the plaintiffs, he agreed to this request.

27 14. The defendant told the court that in August 1994, when Chua received the cheque for $3,000 Chua signed D.1. Two months later Chua collected the second cheque for $2,000, and signed D.2. Two months thereafter Chua collected the third cheque for $2,000 and signed D.3. Two months thereafter, in December 1994, when Chua came to collect the final instalment, the defendant was having a meeting in his office and so spoke with Chua only over the intercom. The defendant said that Chua told him that he wanted the final cheque to include the interest payable and wanted to discuss the interest rate. The defendant told Chua that it was not then convenient to discuss the matter and told Chua that he would hand over a blank cheque and would call Chua later to discuss the amount payable. The defendant then instructed one of his staff to hand the blank cheque to Chua.

28 15. The defendant told the court that when he subsequently called Chua to discuss the interest charges, Chua wanted to discuss Guan Heng's debt and wanted settlement of that. The defendant said he was surprised by this request and asked Chua to refer to the liquidators.

29 **Findings**

30 16. I formed the view that the defendant was an experienced businessman and that it was highly unlikely that the defendant would have volunteered to personally indemnify the plaintiffs in respect of so large a sum that was outstanding. I also agreed with the defendant that it made no sense for the defendant to ask the plaintiffs not to file proof of debt when Guan Heng itself would have to disclose details of all its creditors to the liquidators regardless of whether the plaintiffs filed their claim or not. I also accepted the defendant's allegations that the three cheques relied on by the plaintiffs as constituting part payments by the defendant of the outstanding amount of US$262,394.77 were in fact repayments by the defendant of a personal loan of $10,000 taken by him from Chua. I accepted the defendant's evidence that he had made these cheques payable to the plaintiffs only because Chua had requested that he do so. The defendant's evidence on this was fortified by Chua's acknowledgment on the vouchers (D.1, D.2 and D.3) that these sums were in repayment of a personal loan. I rejected Chua's suggestion that at the time he signed the vouchers the reference to the sums being the return of a personal loan were not stated in the voucher.

31 17. For the sake of completeness, I would add that if at all the defendant had agreed to pay Guan Heng's debt it was by way of a personal guarantee and not by way of an indemnity. By virtue of s 6A of the Civil Law Act, a contract of guarantee needs to be evidenced in writing and needs to be signed by the party giving the guarantee before it can be enforced. As there was no written contract in this case, the plaintiffs' claim would therefore also fail on the alternate defence pleaded.

32 18. In my view, the plaintiffs had not discharged the onus on him of proving that the defendant had given the indemnity alleged and accordingly I dismissed the plaintiffs' claim with costs.

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33 S Rajendran

34 Judge

S Rajendran J

Choo Kwun Kiat (Choo & Yap) for the plaintiffs
Lim Seng Siew (Ong Tay & Pnrs) for the defendant

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