IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 311

Suit 268/1998, RA 207/1998

Between

I G Int'l Trading Pte Ltd

… Plaintiff

And

Liew Choong Fatt

… Defendant

GROUNDS OF DECISION

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

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I G Int'l Trading Pte Ltd v Liew Choong Fatt

[1998] SGHC 311

Suit 268/1998, RA 207/1998
Goh Joon Seng J
19 September 1998

Judgment :

GROUNDS OF JUDGMENT

1 This was an appeal by the Defendant against the order of the Assistant Registrar that summary judgment be entered against the Defendant for

(i) the sum of US$280,000 or its equivalent in Singapore currency;

(ii) interest thereon at 6% per annum from date of judgment to date of payment; and

(iii) costs fixed at $2,000.00.

I dismissed the appeal with costs fixed at $3,500.00. The Defendant has appealed to the Court of Appeal. I now give my reasons.

The Facts

2 The Plaintiff is a company incorporated in Singapore, the shares of which are fully owned by Yuval Gattegno ("Yuval"). The Defendant was with a Singapore company, Poon Guan Pte Ltd, which had dealings with Yuval's father. In 1991, when Yuval visited Singapore, on the instructions of his father, he called on Poon Guan Pte Ltd. There he met the Defendant.

3 In 1993, Yuval was working for Eagle Pacific Ltd which exported seafood from Vietnam to Europe. A Singapore company, Opnoc Pte Ltd ("Opnoc") acted as its commission agent. The Defendant was the executive director of Opnoc.

4 Sometime in 1994 at the suggestion of the Defendant, Yuval and the Defendant decided to go into business together. The business would be done through a company. The company would buy seafood from Vietnam and other areas for sale to customers in the United States and Europe. The finance would come from Yuval.

5 Pursuant to the said agreement, Yuval acquired the Plaintiff, then called Sappheiro Gems Pte Ltd for $1,000. Yuval subscribed for 299,999 of the 300,000 issued shares of $1 each. The remaining share was held by a nominee of Yuval. The Plaintiff was renamed "I.G. Int'l Trading Pte Ltd" ("I.G."). Yuval also gave loans to I.G. so that I.G. had a working capital of US$500,000.

6 The Defendant was responsible for the management of I.G. in Singapore. He was paid out of the profits of I.G. Yuval stayed on in Vietnam sourcing the supply of seafood. I.G. operated an account with Banque Francaise du Commerce Exterieur. Yuval and the Defendant were joint signatories of this account. But as Yuval was based in Vietnam he would pre-sign blank cheques and other banking documents on his visits to Singapore.

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7 The seafood sourced in Vietnam and freighted to the United States were sold through, *inter alia*, Aquarius Seafood Inc. ("Aquarius") of Orlando, Florida. The President of Aquarius is Marco Lim. Aquarius would sell I.G.'s stocks, deduct its costs and commission and remit the balance of the proceeds to I.G. Marco Lim is a friend of the Defendant. Aquarius was also importing seafood from South America for sale in the United States. To pay for the supply from South America, Aquarius was allowed by the Defendant to use the funds that ought to have been remitted to I.G. This was without the knowledge of Yuval except for the first transaction on 22 September 1994 which was specifically authorised by Yuval. In authorising the first transaction, Yuval made it clear to the Defendant that he should not allow Aquarius to use I.G.'s funds to finance its purchases from South America without Yuval's express approval and without the details of the transactions being sent to Yuval.

8 Notwithstanding Yuval's instructions, by August 1996, the sum of US$388,000 was not accounted for by Aquarius. This comprised US$162,000 being payment due and US$226,000 being the value of I.G.'s stocks with Aquarius. On discovering this, Yuval from Vietnam telephoned the Defendant, then in Orlando, asking for an explanation. According to Yuval, the Defendant admitted that he had transferred some of the stocks of I.G. to Aquarius to reduce the indebtedness of Opnoc to Aquarius. Following the conversation, the Defendant telexed Yuval assuming liability as follows:

> " Further to our telephone conversation today (22 August 1996), I have agreed to pay you USD100,000.00 in December 1996, latest January 1996 [sic], and USD200,000.00 by end December 1997. This is in view of the debt that Marco Lim has created with your money in Internal Trading. I am very sorry about the situation and appreciate your concern and the allowance you have given me. "

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9 When the time came for the Defendant to pay US$100,000 he telexed Yuval on 6 December 1996 as follows:

" …

> 2) I can pay you only US$50,000 by 15.1.96 [sic]. The other US$50,000 by 15.2.96 [sic]. I will try to do it earlier than 15.2.96 [sic].

3) I will discuss with you on how to pay you the balance of US$200,000 when I meet up with you in Vietnam.

… "

10 On 9 December 1996 the Defendant telexed Yuval as follows:

> " I am sorry to put you in such a predicament with your father. Please believe me that I have told your father that I did it without your knowledge or approval.

On my part, I will certainly fulfil it. 1st week January but most likely 15 January 1996 [sic].… "

11 The Defendant did not make any payment by 15 January 1997. On 17 January 1997, he telexed Yuval, requesting for more time to pay the US$100,000:

> "2) On my part, I have a slight delay. I am very very sorry. Please give me 7-10 more days. I will certainly have to fulfil my obligation. Let me speak to you more on my plans when I meet up with you. I certainly appreciate your tolerance all these while. "

12 A further admission was made in the Defendant's telex of 20 January 1997 stating:

" My plan is as follows:

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> 1) April 1997 - I will be able to obtain a loan of US$200,000 and put the money in I.G. I am 98% confident in getting this loan.
>
> 2) I need your help to use this money to do one frogleg a month. The profits should be able to pay back the loan in 1 years. All risks are on me.
>
> 3) I am sorry about this inconvenience but your help is very much appreciated. I am sincere about my repayment.
>
> … "

13 On 22 January 1997 the Defendant telexed again as follows:

> "…
>
> 4) Perhaps there was miscommunication between your father and I. I promised you US$100,000. May be I told your father between US$100,000 or US$150,000. Please help me convince your father that I will pay US$50,000 3.2.97 and US$50,000 15.2.97. Balance of US$200,000 - as explained in my previous fax my plan was in April. Yuval believe me. I am trying my very best. Besides my commitment to you I am facing heavy/serious pressure from K T Lai/Cpt Mullan. I have aged 10 years and since last year. However I believe I will overcome it. "

14 In addition to these telexes there were telephone conversations in which the Defendant promised Yuval that payment of US$300,000 would be made.

15 In April 1997 the shortfall in the accounts of I.G. was around US$500,000, inclusive of the US$300,000 on the Aquarius account. The balance had been lent by the Defendant to his associate, Takahashi Trading Pte Ltd ("Takahashi").

16 This amount was reduced by payment in of US$27,000. Of this US$27,000, US$20,000 went towards reducing the amount due on the Aquarius account to US$280,000.

17 On 29 April 1997, the Defendant handed to Yuval a Deed of Covenance guaranteeing payment of US$210,000 by Takahashi and undertaking to pay US$280,000 on the Aquarius account. The Deed of Covenance read:

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> " I, NRIC 0017517Z LIEW CHOONG FATT of address 53A Hin Seng Garden West Coast Way, Singapore 127016 hereby covenant with IG INTERNATIONAL TRADING PTE LTD, a company incorporated under The Laws Of The Republic of Singapore, of address 20 Cecil Street #22-05 The Exchange Singapore 049705 the following:-
>
> 1. That I, LIEW CHOONG FATT will stand as a guarantor to pay United States Dollars TWO HUNDRED AND TEN THOUSAND ONLY (USD 210,000.00) to IG INTERNATIONAL TRADING PTE LTD on or before 20th May 1997 in the event that TAKAHASHI TRADING PTE LTD defaults to fulfil the same.
>
> 2. That I, LIEW CHOONG FATT will pay the sum of United States Dollars TWO HUNDRED AND EIGHTY THOUSAND (USD 280,000.00) to IG INTERNATIONAL TRADING PTE LTD on or before 30th January 1998.
>
> … "

18 Yuval refused to accept the Deed of Covenance. On his insistence two bonds were executed by the Defendant. One was for US$210,000 on the Takahashi account ("the Takahashi bond") and the other was for US$280,000 on the Aquarius account ("the Aquarius bond").

The Aquarius bond read:

" BY THIS BOND I, LIEW CHOONG FATT (Singapore NRIC

> No S0017517/Z) of 53A Hin Seng Garden, West Coast Way, Singapore 127016, acknowledge myself bound to I.G. INT'L TRADING PTE LTD a company incorporated in the Republic of Singapore and having its registered office at 20 Cecil Street #22-05, The Exchange, Singapore 049705, in the sum of United States Dollars Two Hundred and Eight Thousand only (US$280,000.00) to be paid to the said I.G. INT'L TRADING PTE LTD.
>
> SEALED with my seal this 30 day of April, 1997.
>
> NOW THE ABOVE-WRITTEN BOND is conditioned to be void in case the above-bounden LIEW CHOONG FATT shall on the 30th day of January, 1998 pay to the abovenamed I.G. INT'L TRADING PTE LTD the sum of United States Dollars Two Hundred and Eighty Thousand only (US$280,000.00) but in the event of the above-bounden LIEW CHOONG FATT failing to pay

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> the said sum upon the said date the abovewritten bond shall remain in full force and effect notwithstanding no demand be made for the same by the said I.G. INT'L TRADING PTE LTD its assigns or successors in title.
>
> … "

The Takahashi bond read:

" BY THIS BOND I, LIEW CHOONG FATT (Singapore NRIC

> No S0017517/Z) of 53A Hin Seng Garden, West Coast Way, Singapore 127016, acknowledge myself bound to I.G. INT'L TRADING PTE LTD a company incorporated in the Republic of Singapore and having its registered office at 20 Cecil Street #22-05, The Exchange, Singapore 049705, in the sum of United States Dollars Two Hundred and Ten Thousand only (US$210,000.00) to be paid to the said I.G. INT'L TRADING PTE LTD.
>
> SEALED with my seal this 30 day of April, 1997.
>
> NOW THE ABOVE-WRITTEN BOND is conditioned to be void in case the above-bounden LIEW CHOONG FATT or TAKAHASHI TRADING PTE LTD a company incorporated in the Republic of Singapore and having its registered office at 206 Pandan Loop, Singapore 128397, shall on the 20th day of May 1997 pay to the abovenamed I.G. INT'L TRADING PTE LTD the sum of United States Dollars Two Hundred and Ten Thousand only (US$210,000.00) but in the event of the above-bounden LIEW CHOONG FATT or the said TAKAHASHI TRADING PTE LTD failing to pay the said sum upon the said date the abovewritten bond shall remain in full force and effect notwithstanding no demand be made for the same by the said I.G. INT'L TRADING PTE LTD its assigns or successors in title.
>
> … "

19 Subsequent to the execution of the two bonds the sum of US$129,000 was paid towards reduction of the amount due on the Takahashi account leaving a balance of US$81,000.

20 On 24 July 1997, the Plaintiff company commenced proceedings in Suit 1495 of 1997 under the Takahashi bond against the Defendant for the balance due on the Takahashi account. This claim was paid on 6 August 1997.

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21 Payment under the Aquarius bond was due on 30 January 1998. Following the Defendant's default, I.G. commenced these proceedings on 25 February 1998 and applied for summary judgment. Judgment was entered for I.G. by the Assistant Registrar. The Defendant appealed.

My Reasons

22 In opposing the I.G.'s claim on the Aquarius bond, the Defendant's defence is that the debt was due from Aquarius. The Aquarius bond was only to be used to appease Yuval's father. It was also executed under pressure by Yuval at the time when the Defendant's brother was terminally ill with cancer and he himself was also having problems with his fellow directors of Opnoc.

23 This defence offered no reasonable explanation for the six telexes, five of which were handwritten, and the Deed of Covenance admitting and undertaking to pay the amount due on the Aquarius account. The Defendant had not raised any triable issue on I.G.'s claim. Accordingly, I dismissed the appeal with costs.

GOH JOON SENG

JUDGE

Goh Joon Seng J

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Jeffrey Lau (Lau & Company) for the defendant/appellant
Cheah Kok Lim (Michael Khoo & Partners) for the plaintiff/respondent

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