IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 406

Suit 1669/1997

Between

Lim & Lyle Associates Pte Ltd

… Plaintiff

And

Jurgen Christian Kurt Schlotzer

… Defendant

GROUNDS OF DECISION

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

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Lim & Lyle Associates Pte Ltd v Jurgen Christian Kurt Schlotzer

[1998] SGHC 406

Suit 1669/1997
Warren Khoo L H J
17 December 1998

Judgment :

GROUNDS OF DECISION

1. This was a the trial of a preliminary point in an action on a bill of exchange. The facts, briefly, are as follows. Adria Orient Line Pte Ltd ("AOL") was a shipping company. At the material time, i.e. the early part of 1997, it was engaged in cargo services between the Adriatic and India using chartered vessels. Its shareholders were Mr John Wong and the defendant. They were also the only directors on record. Mr Wong, who, unfortunately, has passed away in March

1998, was the major registered shareholder. Two-thirds of the shareholding of the company were registered in his name. The defendant was registered as holding the remaining one-third. There was also a Mr Kobal. He was the managing director of Genshipping, the Singapore subsidiary of Splosna, the national carrier or Slovenia. He no doubt knew well shipping business involving Adriatic ports. It was Mr Kobal who had brought Mr Wong and the defendant

together to form this joint venture. Mr Wong relied heavily on Mr Kobal to keep an eye on the affairs of AOL. Mr Wong himself appears to have taken a back seat as far as the day-to-day affairs of the company were concerned, although he seems to have been the principal party shouldering the input of working capital. Mr Kobal describes himself as a friend and adviser to Mr Wong. But he kept himself throughout so intimately informed and concerned with all aspects of the activities of AOL that it was suggested to him in court that he probably had some personal material interest in the company, a suggestion that he did not strenuously deny. However, it was the defendant who was in charge of the day-to-day operations.

2. Towards the end of 1996, AOL anticipated cash flow problems. Mr Wong, who, as I said, had been seeing to the cash needs of AOL, was hard up for cash himself. He knew Mr Gerald Lim, the virtual owner of the plaintiff company, well. He asked Mr Lim to assist. There were discussions between the defendant and Mr Lim. The defendant made presentations to Mr Lim concerning profitable shipments of cargo on two vessels. Mr Kobal, whom Mr Lim had known for some time, and who was no doubt present at these discussions, added his opinion that the project would be extremely lucrative. Mr Lim was persuaded to lend a sum of $400,000. In return for his troubles, he was to be remunerated with a sum of $40,000, equivalent to 10% of the sum advanced.

3. Mr Lim knew, or thought he knew, about bills of exchange. He had learned about them in a commercial course at university. He had also come across such instruments in the course of his business. He thought the neatest way to get security for the loan was to get a bill of exchange. He set about preparing one. Eventually, he came up with one in the following form:

BILL OF EXCHANGE

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Exchange for S$440,000 Singapore, 15 January 1997

At sight of this First of Exchange (First of the same tenor and date being unpaid)

Pay to the order of Lim & Lyle Associates Pte Ltd the sum of Singapore Dollars Four Hundred Forty Thousand Only.

Value received Project shipment of cargo ref MV Panglima and MV Her An.

To mature on 15 June 1997. Accepted on a joint and several basis by

4. Across the bottom portion of this form, the names of the defendant, Kobal and Wong were typed in, together with their identity card or passport numbers, with a space above the name marked by a line for signature. Mr Lim originally had typed in his own name as well. But he realised that he was not going to be an acceptor. It was a mistake. So he blanked it out. Instead, he signed his name against the stamp of the plaintiff company in the body of the instrument under the line starting "Value received …".

5. Mr Lim explains that he regarded the defendant as the person who was primarily responsible for the loan, as he was the person running AOL. He included Mr Kobal, as Kobal had encouraged him to extend the loan on the prospect of certain success. As he puts it, he wanted Mr Kobal to put his money where his mouth was. As for Mr Wong, Mr Lim says he was a very close family friend. He had known Mr Wong for over 30 years. His mother is godmother to Mr Wong’s children. Although Mr Wong would have signed the document if asked to do so, Mr Lim did not feel it necessary to formalise his relationship with Mr Wong in writing. Mr Lim gave the instrument to Mr Kobal for Mr Kobal to get the defendant to sign, and for Mr Kobal himself also to sign. Both

of them did so. The instrument was then returned to Mr Lim. But, as evident from the instrument produced in court, Mr Wong never signed it. Mr Lim arranged for the loan amount to be paid into AOL's account after getting back the instrument from Kobal.

6. The bill of exchange matured on 15 April 1997. However, it appears that AOL was still strapped for cash, and Mr Lim could not be repaid. There were discussions about extending the loan. Eventually, it was agreed that the loan be extended to 15 June 1997. A sum of $50,000 was paid to Mr Lim in that connection, although what it was paid for is a point of some dispute. Mr Lim prepared another bill of exchange. It was in exactly the same form as the first one, except that it was dated 15 April 1997 and the maturity date was 15 June 1997, and except that at the bottom portion, there were four lines, but no names were inserted under them. The words "Accepted on a joint and several basis", however, appear in this instrument as they did in the first one.

7. It is this instrument of 15 April 1997 which is the subject of the plaintiffs' claim. It bears only the defendant's signature ostensibly as the acceptor. The preliminary question is whether the defendant may be held liable on an instrument which on the face of it was intended to be accepted by more than one person but was in fact accepted by him only.

8. The instrument, like the previous one, purported to be a bill of exchange. As the drawees' names were not shown in the instrument, it might be asked whether it was a bill of exchange properly so called. S 6 of the Bills of Exchange Act requires that the drawee or drawees be named or otherwise indicated in a bill with reasonable certainty. In **Peto v. Reynolds** [1854] 9 Exch. 410, it was held that a person who purports to accept a bill which did not fulfil this requirement might be held liable as the maker of a promissory note. However, on the view

that I take of this case, it will be seen that it does not matter whether the instrument is a bill of exchange or a promissory note.

9. As I said, the instrument bears only one signature, that of the defendant. Mr Lim explains that when he prepared this instrument, he already knew that Kobal was not going to sign it, as Kobal had blamed the defendant for mismanaging AOL's finances. He also knew that Mr Wong was not going to sign it. When asked in court why then he left four spaces for signatures, he explained that he was just following the first instrument done in January. When asked about the retention of the words "Accepted on a joint and several basis", he said he did not understand what they meant; he thought that they meant each person would be individually responsible. It did not occur to him, he says, that these words would be consistent with only one person being held responsible.

10. Mr Kobal supports Mr Lim's evidence that during the discussions he had already said he was not going to sign it. The defendant, on the other hand, says that in fact it had been agreed that all three would sign it even though Kobal and Wong were unhappy about his management of the AOL.

11. In the case of a guarantee, in **Indian Bank v. Raja Suria & Ors** [1993] 2 SLR 497, the Court of Appeal, following the decision of the Queensland Full Court in **Taubmans Pty Ltd v. Loakes** [1991] 2 QD R 109, held that it is not a rule of law that, where an instrument of guarantee in the form or in terms that imply it is to be executed by more than one person, all must sign before any is bound; the question in each case is what was the intention of the parties. The **Taubmans** case makes it clear that the common intention of the parties may be ascertained from evidence outside the instrument, as well as from the form of the instrument itself.

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12. In the case of negotiable instruments, it is necessary to be cautious about admitting parol evidence of intention or agreement outside the instrument, as to do so may undermine the certainty and finality of such instruments. However, as between immediate parties, this consideration would not apply, and I think parol evidence may be admitted subject to the normal rule governing its admission. In this case, the parties have given conflicting evidence of their respective intentions. I do not think the evidence enables one to find any common intention. I think one has therefore to rely on what the parties actually did or did not do, as evidenced by the form of the instrument as prepared and as executed.

13. The inclusion of the words "Accepted on a joint and several basis" and the provision of spaces for more than one person to signify acceptance are clear indications of an intention that the document was to be signed by more than one person, just as the previous one had been so intended. The instrument as executed also shows beyond doubt that the defendant accepted it on the basis that his liability was to be joint and several with others, and not his alone. On the face of the instrument, his liability would not begin until others had sign it. It was conditional on others signing it.

14. Counsel for the plaintiffs refers to the case of **Owen v. Von Uster** [1830] LT 194 for the proposition that if a bill is addressed to several drawees, any one of the drawees may accept it so as to bind himself. This may be so. However, it is no answer to the fact that the defendant here accepted the bill expressly on the basis I have referred to.

15. In the circumstances, I considered that the preliminary issue should be decided in the defendant’s favour, and that the plaintiffs’ claim as a whole should be dismissed. I so ordered.

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16. On the question of costs, I thought that a special order might be necessary. The issue should have been apparent from the moment the instrument was disclosed as the basis of the plaintiffs' claim. It was only at the trial, on the court's suggestion, that this issue was raised as a preliminary issue. So, when announcing my decision on the preliminary issue, I told counsel that I would hear submissions on the question of costs after the handing down of these grounds of decision.

Dated this 17th day of December, 1998.

Warren L H Khoo

Judge

Warren Khoo L H J

K Gopalan and Grace Chacko for the plaintiffs
Dixon Ng for the defendant

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