IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 7

Suit 643/1997, RA 230/1997

Between

Prosperous Credit Pte Ltd

… Plaintiff

And

Gen Hwa Franchise International Pte Ltd

… Defendant

GROUNDS OF DECISION

Civil Procedure — Summary judgment; Credit and Security — Guarantees and indemnities

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

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Prosperous Credit Pte Ltd v Gen Hwa Franchise International Pte Ltd and Others

[1998] SGHC 7

Suit 643/1997, RA 230/1997
Judith Prakash J
07 January 1998

Judgment:

JUDITH PRAKASH J

By a hire purchase agreement date 18 July 1996, the plaintiffs, as owners, let on hire purchase to the first defendants, Gen Hwa Franchise International Pte Ltd, as hirers, three machines. On the same day, the second, third and fourth defendants signed guarantees of the first defendants` obligations under the hire purchase agreement. At the time, the third and fourth defendants were directors and shareholders of the first defendants.

2.Two guarantees were signed. The hire purchase agreement was a printed standard form document prepared by the plaintiffs which comprised four pages. The fourth page contained the execution portion of the hire purchase agreement, a `Delivery Receipt` and a portion entitled `Guarantee`. The guarantee portion provided for the signature of two guarantors only and this portion was signed by the second and third defendants. The fourth defendant signed a separate guarantee. This was a printed two page document entitled `Personal Guarantee`.

The signature of all three guarantors was witnessed by the same person, one Ms Tan Leng Leng, a director of the plaintiff company.

3.The first defendants defaulted in payment of the instalments due under the hire purchase agreement. On 4 February 1997, the plaintiffs served on the first defendants a notice demanding payment of the arrears of instalments which then amounted to $20,717.26. The first defendants did not pay and on 19 February 1997, the plaintiffs exercised their rights under cl 10 of the hire purchase agreement to terminate the hiring. On such termination, a sum of $195,766.71 became due. On 8 March 1997, the plaintiffs, through their solicitors, demanded payment of the said sum from the three guarantors.

4.Neither the principal debtor nor any of the guarantors paid any part of the sum demanded by the plaintiffs. So this suit was started on 1 April 1997. On 7 April 1997, the second defendant entered an appearance to the action. On 12 April 1997, the plaintiffs obtained judgment in default of appearance against the first defendants. On 8 May 1997, they obtained judgment on default of appearance against the fourth defendant. On 13 May 1997, the third defendant entered an appearance.

5.On 28 May 1997, the plaintiffs filed an application for summary judgment against the second and third defendants. This application was heard on 7 July 1997 before the learned assistant registrar. The second defendant`s solicitors had no instructions and judgment was accordingly entered against the second defendant. The third defendant, however, had filed an affidavit resisting the application and arguments were made by counsel on his behalf. At the end of the day, the assistant registrar found that the third defendant had not raised any triable issues and ordered that judgment be entered against him. The third

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defendant appealed from this order and filed a further affidavit. I heard the appeal and dismissed it. The third defendant has now appealed to the Court of Appeal.

6.In the affidavit which he filed to resist the O 14 application, the third defendant stated that he had not signed as guarantor in the guarantee portion of the hire purchase agreement. He said that he had asked the plaintiffs to produce the original copy of the document for his inspection and that on 4 June 1997 he had attended the offices of the plaintiffs` solicitors to inspect the document. On that date, however, he was not shown the original copy but only a carbon copy of the document. He found that the signature on that carbon copy was different from the signature that he uses and it was not signed by him. He had then made a police report on 5 June 1997 that his signature on the guarantee was forged.

7.The second issue which the third defendant raised in his affidavit related to the quantum of the plaintiffs` claim. The plaintiffs had produced an invoice showing that they had purchased the three machines let on hire to the first defendants at the prices of $76,000, $76,000 and $140,000 respectively. The third defendant asserted that these prices were inflated. He attached a copy of a quotation from the seller of the goods showing that the first two machines had been sold for $60,000 and $63,000 respectively so that the total amount paid to the seller had been $265,000 and not $292,000 as the plaintiffs had claimed.

8.In response to the above allegations, two affidavits were filed on behalf of the plaintiffs. The first, dated 24 June 1997, was made by Ms Tan Leng Leng. She stated that she was the witness named in the hire purchase agreement and that she had witnessed the execution of the joint and several guarantee dated 18 July 1996 on p 4 of the same document by the guarantors named therein. Ms Tan

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confirmed that she had signed that document as witness to the signatures of the second and third defendants who had executed the guarantee in her presence. She explained that due to lack of space on p 4 of the said document, a separate guarantee was executed by the fourth defendant. Ms Tan added that she had also witnessed the signing of the separate guarantee by the fourth defendant who executed it in her presence and that as such she had appended her signature as witness.

9.The second affidavit was made by Mr Tan Soo Cheng, another director of the plaintiff company. He produced the tenancy agreement which the third defendant had signed on behalf of the first defendants. He also produced three forms showing applications made by the first defendants for hire purchase services from the plaintiffs. In one of these forms, the third defendant was clearly named as the proposed guarantor and his full particulars were inserted on the form. This form was signed by both the third defendant and the fourth defendant (the two directors of the first defendants) in order to apply for hire purchase facilities on behalf of the first defendants.

10.Mr Tan further produced letters written by the plaintiffs to each of the defendants enclosing the hire purchase agreement itself and, in respect of the second, third and fourth defendants, officially notifying him/her of his/her status as personal guarantor. The said letters were returned by the first, second, third and fourth defendants, duly signed to acknowledge their receipt of the hire purchase agreement. Also produced was a cheque signed by the third and fourth defendants on behalf of the first defendants and dated 19 July 1996 (ie the day after the hire purchase agreement was signed) and made out in favour of the plaintiffs in the sum of $6,700 being payment of the first instalment due under the hire purchase contract.

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11.As regards the third defendant`s claim that plaintiffs had inflated the prices of the machines, Mr Tan said that it was completely untrue. The quotation from the seller of the goods which the third defendant had exhibited had not been shown to the plaintiffs prior to the date of the third defendant`s affidavit. Mr Tan produced a copy of the invoice which the seller had issued to the plaintiffs showing the total purchase price as being $292,000 and that the balance due, after the deposit had been paid, was $204,400. He also produced a copy of the plaintiffs` cheque in favour of the seller for the amount of $204,400 in settlement of the balance due.

12.The third defendant`s arguments based on fraudulent pricing and a forged signature found no favour with the learned assistant registrar. After judgment was entered against him, the third defendant filed a further affidavit. In this document, he stated that he had not been an active director of the first defendants. It had been the second and fourth defendants who had actively managed the company`s affairs. He also stated that if he had signed the hire purchase agreement as guarantor, he would only have done so at the request of the second and fourth defendants and on the understanding and condition that the second and fourth defendants were also guarantors to the hire purchase agreement. He said that if the fourth defendant was not jointly and severally liable with him as a guarantor, he would never have signed the hire purchase agreement. He further stated that he had been advised that he was not now able to obtain a contribution from the fourth defendant as the fourth defendant had signed a separate guarantee and had not signed as guarantor on the hire purchase agreement itself.

13.At the hearing of the appeal, the third defendant dropped the issue of fraudulent invoicing. He repeated that the first issue was whether he had in fact

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signed the guarantee under which the plaintiffs were claiming but, in a shift from his original stand, he claimed that the second triable issue was whether or not it was the intention of the parties that all the co-sureties of the joint and several guarantee had to sign the guarantee and if so whether or not this requirement had been met. I did not consider that the above issues were in fact made out by the third defendant.

14.The third defendant had tried by his first issue to raise an issue of fact which needed to be tested in open court. A bare assertion is not enough, however, to raise an issue of fact. As Ackner LJ said in ***Banque de Paris et Des Pays-Bas (Suisse) SA v Costa de Naray*** [1984] 1 Lloyd`s Rep 21:

> *the mere assertion in an affidavit of a given situation which is to be the basis of a defence does not, ipso facto, provide leave to defend; the court must look at the whole situation and ask itself whether the defendant has satisfied the court that there is a fair or reasonable probability of the defendant`s having a real or bona fide defence (at p 23).*

15.In the present case, the surrounding circumstances indicated that there was no merit in the third defendant`s contention that he had not signed the guarantee. Quite apart from the fact that the plaintiffs had a witness who had actually witnessed the execution of the documents by all the guarantors, the third defendant himself had admitted that he had signed the application form to stand as guarantor. Further, by their letter dated 18 July 1996 to him, the plaintiffs had referred to the hire purchase agreement under which he had agreed to stand as personal guarantor in respect of the payment of 35 monthly instalments of $6,700 each and a final payment of $6,692 by the first defendants. The third defendant had signed an acknowledgement endorsed on the duplicate copy of this letter whereby he acknowledged receipt of the hire purchase agreement and

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also stated that he agreed to be the guarantor. Why did he sign this acknowledgement if he had not already signed the guarantee?

16.It was also material that until the proceedings were commenced, he had not denied that he had stood as guarantor. When the plaintiffs demanded payment from the first defendants on 4 February 1997, a carbon copy of the letter of demand was sent to the third defendant as a guarantor. He did not at that stage deny having acted as such. The proceedings were commenced in March and served on him by substituted service. He entered appearance in early May but it was not until June 1997 that he made his police report asserting the forgery of his signature as guarantor. If indeed he had never signed the guarantee, I would have expected him to have told the plaintiffs so at the earliest opportunity and not only by way of a police report and an affidavit filed after O 14 proceedings had been taken. It did not appear to me that overall there was a reasonable probability of the third defendant having a bona fide defence on the ground that he had not signed the guarantee.

17.The second issue which the third defendant sought to raise was a legal one. He argued that if he was found to have signed the guarantee, he would have done so on the understanding and condition that the second and fourth defendants would also have signed that document. As the fourth defendant had signed a different and separate guarantee, he was not jointly and severally liable with the third defendant to the plaintiffs. Counsel argued that because of this, the third defendant was not liable under the guarantee at all. He relied on the cases of **Hong Leong Finance Ltd v Goh Khim Teik** [1994] 1 SLR 366 and **Indian Bank v Raja Suria & Ors** [1993] 2 SLR 497 . In my judgment neither case assisted the third defendant.

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18.In the ***Hong Leong Finance*** case, the plaintiff finance company granted a loan to a company to be secured inter alia by a guarantee. The original intention was that the guarantee would be given by five persons. In fact, only three executed it. At the time of execution, the document bore the names of all five prospective guarantors. After it was signed by three of them, the names of the other two were deleted. The plaintiffs` claim against Mr Chan, one of the guarantors who had signed, was dismissed. It was held that where a surety had executed a document in the belief, derived from the form of the document, that it would be executed by all the sureties named as such in the document as persons who were to sign, he would be relieved from his obligation if all the others did not sign. Mr Chan had, in this case, executed the guarantee on the basis or understanding that all five persons would sign it and as the absence of the execution thereof by the other two persons had not been agreed to by him, Mr Chan was not bound by the guarantee.

19.It can be seen from the above recital that the facts of the ***Hong Leong Finance*** case were very different from those of the case before me. The guarantee which was found on p 4 of the hire purchase agreement had space only for execution by two guarantors. The fourth defendant`s name did not appear at all on that guarantee and therefore when the guarantee was presented to the third defendant he could not have thought that the same guarantee was to be executed by the fourth defendant. Further, in ***Hong Leong Finance*** the two other prospective guarantors did not become sureties at all. In this case, the fourth defendant signed a separate guarantee document and thereby became a surety. The separate guarantee document was executed on the same date as the guarantee which the second and third defendants signed and therefore if the third defendant had signed in thes. expectation that the fourth defendant would also become a guarantor, that expectation was completely fulfilled. The fact that

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the fourth defendant did not sign the same guarantee document as the third defendant did not mean that he was not equally a surety of the first defendants` obligations. By signing a guarantee for those same obligations which the first defendants owed the plaintiffs, the fourth defendant became a co-surety and became liable to contribute to any payment made by the third defendant as guarantor to the plaintiffs.

20.The facts in the ***Indian Bank*** case might seem, on first sight, to be closer to the facts in this case. There a company called Wesmapack (S) Pte Ltd had requested the appellant bank to grant it overdraft facilities to be secured, inter alia, by the personal guarantee of all its directors. The seven directors were subsequently named in the bank`s standard form of guarantee as joint and several guarantors of the facilities granted to Wesmapack. On 19 January 1982, six of the directors signed the standard guarantee. The facilities were drawn on 1 February and on 14 March the seventh director signed a separate guarantee document in favour of the bank. Upon Wesmapack`s default, the bank sued all seven guarantors. It was unsuccessful. The Court of Appeal held that the two guarantees could not be read together as part of one transaction since neither document referred to the other and there was no evidence to show that the two were related. Further, all co-sureties of a joint and several guarantee had to sign it unless it was shown that there was no such intention or that the requirement had been waived. The trial judge found that two of the directors had been unaware at all times that the seventh director had not executed the standard guarantee and that it was never their intention to waive the requirement that all seven directors signed the guarantee. It is noteworthy that the court found that the intention of the parties had been that all guarantors should sign one document.

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21.I considered the ***Indian Bank*** case to be distinguishable. First, there was a substantial time lag between the execution of the two guarantees. When the facilities were drawn down, only six of the intended guarantors had signed the standard guarantee and therefore if there had been a default shortly thereafter, the seventh would have been entirely free of liability. That was not the intention of the parties. In the present case, the two guarantees were executed on the same day and therefore the liability of all three guarantors arose at the same time. Secondly, as pointed out earlier, it does not appear from the documentation that it was contemplated that the fourth defendant would sign the same guarantee document as the second and third defendants. What was agreed was that all three of them would become guarantors and this was in fact achieved. Thirdly, in the ***Indian Bank*** case, two guarantors were able to assert that they had not known of the failure of the seventh to sign the document. No such assertion could be made in this case because first, it was clear from the face of the document that the third defendant signed and that the fourth defendant would not sign that document and, secondly, the fourth defendant in fact signed a document which had the same legal effect on the same day as the third defendant became a guarantor. Even if the third defendant`s original intention had been that all co-guarantors should sign the same document, he waived that requirement by signing a document which on the face of it provided for signature by only two out of the three guarantors.

22.All in all, I was of the view that the third defendant`s appeal had no merits. He was not able to show any triable issues.

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Lee Mun Hooi and Koh Kiew Soon (Lee Bon Leong & Co) for the plaintiffs
Attlee Hue Kuan Yew (Ng Hong & Hue) for the third defendant

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