IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 40

CA 245/1998

Between

Lim & Lyle Associates Pte Ltd

… *Appellant*

And

Schlotzer

… *Respondent*

GROUNDS OF DECISION

Banking — Promissory notes — Payment; Bills of Exchange and Other Negotiable Instruments — Altered

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

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Lim & Lyle Associates Pte Ltd v Schlotzer

[1999] SGCA 40

CA 245/1998
Karthigesu JA; L P Thean JA; Yong Pung How CJ
28 May 1999

Judgment:

LP THEAN JA

(delivering the grounds of judgment of the court): This was an appeal against the decision of Warren Khoo J on a preliminary point concerning an instrument on the basis of which the appellants claimed the sum of $440,000. The learned judge determined the point in favour of the respondent and dismissed the claim of the appellants. Against the decision of the learned judge the appellants appealed. We dismissed the appeal and now give our reasons.

2. ***The facts***

The appellants, Lim & Lyle Associates Pte Ltd, are a company dealing in market research and public opinion polling and general wholesale trade. The respondent, Jurgen Christian Kurt Schlotzer, was the managing director of a company, Adria Orient Lines Pte Ltd (`AOL`), a shipping company incorporated in Singapore. At all material times, AOL operated a regular liner service between Adriatic ports and Oriental ports and time-chartered vessels for

the purpose of transporting cargoes. The shareholders of AOL were the respondent and one John Wong Seng Kiong (`Wong`). Wong, who passed away sometime in March 1998, was the majority shareholder holding two-thirds of the shares in AOL while the respondent held the remaining one-third. Wong appeared to have taken a back seat as far as the day-to-day affairs of the company were concerned, although he was the principal party shouldering the injection of working capital. The respondent was the person in charge of the day-to-day operations of AOL. Another person involved in the affairs of AOL was one Gabrijel Kobal (`Kobal`). Kobal was the managing director of a firm called Genshipping Pacific Line Pte Ltd, a company incorporated in Singapore. It was Kobal who brought Wong and the respondent together to form AOL. Kobal described himself as a friend and adviser to Wong, who apparently relied heavily on Kobal to keep an eye on the affairs of AOL.

3.Around the end of 1996, AOL encountered cash flow problems. AOL was then involved in a specific shipment of project cargo from Europe to India. AOL had chartered two vessels Panglima and Her An but did not have sufficient funds for the operation of the vessels. Kobal, Wong and the respondent then approached one Gerald Lim Thien Su (`Lim`), who was the managing director and virtually the owner of the appellant company, for assistance. Wong and Lim were close family friends, having known each other for over 30 years. Wong also held one-third of the shares in the appellant company. In the discussions that ensued, the respondent represented to Lim that AOL had profitable shipments of cargo on the two vessels which required financing. Kobal, who was present at the meeting, added his opinion that the project was extremely profitable. Lim initially offered to help find an investor or bank to finance the deal, but was unsuccessful. Eventually, Lim was persuaded, and agreed, to lend AOL $400,000, in return for which he would be remunerated with 10% of the

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sum advanced, i.e. $40,000. The loan was made by or on behalf of the appellant company to AOL on 15 January 1997.

Exchange for		Singapore,
At sight of this First of Exchange (First of the same tenor and date being unpaid) Pay to the order of the sum of .		
Value received Project shipment of cargo ref MV Panglima and MV Her An.		
[lowbar]		
	[Stamp of appellants]	[signature of Lim]
To mature on 15 April 1997. Accepted on a joint and several basis by:		
[signed]		[signed]
[lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]	[lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]	[lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]

	[lowbar][lowbar]	[lowbar][lowbar]
Jurgen Christian	Wong Seng Kiong	Gabrijel Kobal
Kurt Schlotzer		
PP 6609238604	NRIC 0162287 J	PP BA 317638
(Germany)		(Slovenia)

4. ***S$ 440,000-00 15 January 1997 Lim & Lyle Associates Pte Ltd Singapore Dollars Four Hundred Forty Thousand Only*** As security for the loan, Lim required a bill of exchange. Apparently Lim had some knowledge of bills of exchange - so he thought. He drew up a form bill of exchange as follows:

BILL OF EXCHANGE

As shown above, the names of the respondent, Wong and Kobal were specifically inserted in the instrument with a line and a space above for signature. The instrument originally had four names, including the name of Lim. However, Lim subsequently realized that as he was not an acceptor, his name should not be included together with the respondent, Wong and Kobal. He then blanked out his name. Instead, he signed his name against the stamp of the appellant company in the body of the instrument immediately above the words: `Accepted on a joint and several basis by: `. The bill was signed by Kobal and the respondent. As for Wong, Lim said that, although Wong`s name was stated there, he did not intend that Wong should sign it, since Wong was his close friend for 30 years and he did not think that it was necessary for him to formalize his relationship with Wong in writing. As it turned out, only the respondent and Kobal signed the first instrument. There was no call on the first instrument.

Exchange for S$ 440,000-00	Singapore, 15 April 1997		

At sight of this Second 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.			
[lowbar]			
		[Stamp of appellants]	[signature of Lim]
To mature on 15 June 1997. Accepted on a joint and several basis by :			
[signed]			
[lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lo	[lowbar][lowbar][lo	[lowbar][lowbar][lo	[lowbar][lowbar][lo

wbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]	wbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]	wbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]	wbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar][lowbar]
[handwriting ofthe respondentof his name andpassport number]			

5.The first instrument matured on 15 April 1997. At that time, AOL was still short of funds and could not make the payment as promised. Discussion then ensued as to the extension of the loan. Eventually, Lim agreed to extend the loan to 15 June 1997. Pursuant to the agreement, Lim prepared another instrument (`the second instrument`), which formed the subject matter of the present suit. The second instrument dated 15 April 1997 with a maturity date of 15 June 1997 was in the following terms:

BILL OF EXCHANGE

Thus, the second instrument was in exactly the same form as the first instrument, except that at the bottom portion, there were four lines, each with a space above for signature, but no names were inserted under them. The words `Accepted on a joint and several basis` also appeared in the second instrument as they did in the first. Only the respondent signed this instrument at the bottom. He also wrote his name and passport number below his signature.

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6.On 29 May 1997, AOL paid a sum of $50,000 to the appellants, but the purpose for which it was paid was a point of serious dispute. The payment was made by AOL. The appellants claimed that the sum was the consideration for the renewal of the loan. The respondent, on the other hand, claimed that the $50,000 was the consideration for his release from liability under the second instrument.

7.The second instrument was unpaid upon maturity. On 25 August 1997, the appellants presented the second instrument to the respondent for payment but received no payment. The appellants then commenced an action on 1 September 1997. They claimed against the respondent as the drawee of the bill of exchange, or alternatively, as the maker of a promissory note for $440,000 payable to the appellants.

8.At the commencement of the trial, the learned judge raised the issue of whether it was intended that Wong and/or Kobal were to sign the bill of exchange and that since they had not done so, whether there was consequently no liability on the respondent`s part following the cases of **Hong Leong Finance Ltd v Goh Khim Teik & Anor** [1994] 1 SLR 366 and **Indian Bank v Raja Suria & Ors** [1993] 2 SLR 497 . The learned judge therefore ordered a trial on the preliminary issue as to whether it was intended that Wong and/or Kobal were to sign the second instrument and if so, what was the effect of their not signing it.

9. ***Decision below***

The learned judge found that the second instrument was intended to be signed by more than one party and that the respondent executed the instrument on the

basis that his liability was to be joint and several with others and not his alone. He held as follows at [para] 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.*

In coming to this decision, the learned judge relied on the reasoning in ***Indian Bank v Raja Suria*** and **Taubmans Pty Ltd v Loakes** [1991] 2 Qd R 109 as applied in the context of guarantees.

10. ***The appeal***

The main issues in this appeal were, first, whether the second instrument was a bill of exchange, and, secondly, whether it was intended by the parties that Wong and/or Kobal should sign the second instrument in addition to the respondent. The first issue was raised before the learned judge, but on the view he took he found that it was not necessary to deal with it.

11.On the first issue, we begin with s 3 of the Bills of Exchange Act (Cap 23) (`the Act`) which, so far as relevant, defines a bill of exchange as follows:

> (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer.

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> (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

Further, s 6 of the Act provides:

> (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.
>
> …

12.It is apparent from the second instrument that no drawee was named or otherwise indicated there. The instrument therefore did not satisfy the definition of a bill of exchange under s 3(1) of the Act, and also did not comply with s 6. In our opinion, it was not a bill of exchange.

13.The appellants, however, maintained that the second instrument was in fact a bill of exchange and not a promissory note. It was submitted that s 6 of the Act must be read with s 20 which provides as follows:

> (1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.
>
> (2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:
>
> *Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.*

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It was pointed out that the respondent upon receipt of the second instrument had the authority to sign and put his name on the document and to make it a `valid` bill of exchange. He had signed the bill and accepted it, and by so doing he agreed to pay the bill according to the tenor of his acceptance. Whether there were other parties who were supposed to accept the instrument but did not do so was immaterial; the acceptance by the respondent was binding on him. In support, the appellants relied on the following passages of ***Chalmers and Guest on Bills of Exchange, Cheques and Promissory Notes*** (15th Ed):

> 274 The acceptance is distinct from the bill. But, in construing the acceptance, the address, or order, to the drawee should be read together with the acceptance so as to give validity (if possible) to the instrument.
>
> 275 A bill may be addressed to two or more drawees whether they are partners or not. The acceptance of some one or more of the drawees, but not all, is a qualified acceptance: the holder of the bill may refuse to take such a qualified acceptance and treat the bill as dishonoured by non-acceptance. But any one of two or more drawees may accept so as to bind himself.

14.In our view, this contention of the appellants was misconceived. Clearly, s 20 of the Act has no application in this case. There was no evidence that Lim as a drawer granted to the respondent any authority to complete the instrument as a bill by inserting any material particular, eg the name of a drawee, to make it a complete bill. In any event, the respondent did not purport to complete the instrument in such a way that he was to become the drawee of the bill. He signed the second instrument merely as an acceptor of that instrument.

15.That notwithstanding, the instrument might still be a promissory note. In ***Chalmers and Guest on Bills of Exchange, Cheques and Promissory Notes*** (15th Ed), the learned authors say at [para] 2094:

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> *Where a bill is not addressed to anyone, but a person writes his `acceptance` on it, that person may be liable on the instrument as the maker of a promissory note.*

The cases of **Peto v Reynolds** [1854] 9 Exch 410, **Mason v Lack** [1929] 45 TLR 363, **Haseldine v Winstanley** [1936] 2 KB 101 were cited as supporting authorities.

16.In ***Peto v Reynolds*** , the plaintiff`s agent drew an instrument in the form of a bill of exchange, but addressed to no one, across which the defendant`s agent wrote an acceptance in the defendant`s name and delivered the bill to the plaintiff`s agent for value received. Parke B held at p 415:

> *This instrument, though in the form of a bill, is not addressed to any one, for I think it impossible to consider the acceptance as an address; but I do not see why the instrument may not be treated as a promissory note, because, upon the face of it, there is a promise to pay the amount written in the name of Samuel Reynolds. Then, if the authority to subscribe his name has been subsequently ratified, that amounts to a promise by him. Therefore, if, on the next trial, there is satisfactory evidence to shew that the defendant absolutely promised to pay the amount mentioned in the instrument, he will be liable as upon a promissory note.*

17.In ***Mason v Lack*** , an instrument purporting to be a bill of exchange was drawn by the plaintiff. At the time when the defendant accepted it, there was no other name on it, and the only indication of any name was that it was payable at a certain bank at which, however, the defendant, in fact, had no account. On a claim by the plaintiff for the amount of the alleged bill, the court held that the instrument was not a bill of exchange but could nevertheless be enforced as a promissory note as it satisfied the definition of a promissory note under the Bills of Exchange Act 1882. Humphreys J said at p 364:

> *I now come to the main defence, which depends upon the form of the instrument. When it was accepted by Mr Lack there was no other name upon it at all. There was no name, and there was*

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> *only an indication of a name in this sense, that the bill is payable at Lloyds Bank, High-street, Shoreditch, but the bill was not addressed to any person ...*

The learned judge then referred to ss 3(1) and 6 of the Bills of Exchange Act 1882 and ***Peto v Reynolds*** and other cases, and said at pp 364-365:

> *Under those circumstances it appears to me clear that at least up to the time of the coming into force of the Bills of Exchange Act 1882, the document in the present case would not have been held to be a bill of exchange. And when I come to look at the language of the Act, and the definition of the term `bill of exchange` which it includes, I find myself unable to hold that this instrument is a bill of exchange, and, therefore, the defence must succeed upon that issue.*
>
> *An application was made to me for leave to amend so as to make the claim against the defendant not as acceptor of a bill of exchange, but as the maker of a promissory note. As the amendment asked for is a technical matter, I thought it right to give leave to amend the statement of claim, so that the claim is against the defendant as the maker of a promissory note signed by the defendant and payable on December 31, 1928. And the defendant, as the maker of that promissory note, must be held liable. I have no doubt that up to 1882 this document would have been held to be a good promissory note, and I turn to the Act to see what is the definition of a promissory note, and I find in s 83(1): `A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.` In my opinion, this document fulfills all the requirements of that definition, and, therefore, the plaintiff is entitled to judgment upon the footing of this document being a promissory note.*

18.In ***Haseldine v Winstanley*** , the drawer drew two documents in the form of bills of exchange without the names of a drawee inserted. The defendant was induced by fraud to sign the instruments as the acceptor. Thereafter, the drawer discounted the bills with the plaintiff who with the drawer`s consent inserted the name of the defendant as the drawee. The plaintiff as the bona fide holder for value without notice of the fraud presented the bill for payment, but the defendant refused to pay. Horridge J held that the insertion of the defendant`s

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name was within s 20 of the Bills of Exchange Act 1882 and rendered the documents good bills of exchange in the hands of the plaintiff who was a bona fide holder for value without an notice of the fraud. He further held that, on the authorities of ***Peto v Reynolds*** and ***Mason v Luck*** , even if they were not bills of exchange they were good promissory notes on which the plaintiff could sue.

19.On the basis of the above authorities the second instrument was a promissory note and not a bill of exchange. That was the alternative claim of the appellants. Section 88 of the Act, among other things, defines a promissory note as follows:

> *Promissory note defined.*
>
> (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

20.The question now is whether, in view of the presence of the words `Accepted on a joint and several basis by` in the instrument followed immediately below by the four blank spaces meant for signatures, it was intended by the parties that Wong and Kobal should also sign that instrument in addition to the respondent or that only the respondent alone should sign it. This is a question of construction of the instrument.

21. ***The relevant matrix of facts***

There was a conflict of evidence as to what the respective parties thought and intended their rights and obligations were at the time they executed the second instrument. Lim in his evidence asserted that at the time there was no intention on his part that Wong should sign it, as was the case in the first instrument. He said that, at the time he drew up the second instrument, he knew that Kobal

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would not sign it, since Kobal had made it clear, at a meeting allegedly attended by the respondent as well, that he was not going to sign the second instrument since he blamed the respondent for mismanaging AOL`s finances. When he was asked why he left four blank spaces for signatures, Lim said that he was just following the first instrument. He further claimed that he did not understand what the words `Accepted on a joint and several basis` meant and that he thought that the use of these words was not inconsistent with one person executing the instrument. The respondent on the other hand testified that, at all times, he was given the impression that both Wong, Kobal and himself were to execute the second instrument. He appended his signature there on the understanding that the other two would do so too.

22.In construing this instrument it is necessary to have regard to the matrix of facts in which the parties were at the material time. The following facts were not disputed. Firstly, the second instrument was prepared by Lim and was in fact a renewal of the first instrument. The first instrument was clearly a joint and several promissory note to be executed by more than one party. It was executed by Kobal and the respondent. Secondly, the relation between Wong and Kobal on the one hand and the respondent on the other was rather strained at the time the second instrument was executed. Kobal said that he was angry with the respondent at the time, as he felt that the respondent had mismanaged AOL`s finances. The respondent himself also testified that relation between him and Kobal was very strained at the time of the proposed renewal of the promissory note. As for his relation with Wong, the respondent also admitted that it was somewhat strained. Thirdly, the $400,000 loaned by the appellants was to provide working capital for AOL. The respondent was, however, only a minority shareholder of AOL, and Wong was the majority shareholder, holding two-thirds of the shares.

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23.The instrument itself showed that it was intended to be a joint and several note to be executed by more than one party and not one by a sole maker. The presence of the words `Accepted on a joint and several basis`, coupled with the provision of four blank spaces for more than one person to signify acceptance, evinced a clear intention on the part of the parties that the second instrument was to be signed by more than one party. On this basis, it was evident that the intention of the parties (as ascertained objectively) was to enter into a joint and several note.

24.On the facts of the case, the respondent had therefore executed a joint and several promissory note intended to be executed by more than one party. As it turned out, only the respondent executed the promissory note. In our view, entering into a joint and several promissory note is substantially different from entering into a sole-maker promissory note. In the latter case, the sole maker is liable on the note. In the former case, the particular co-maker is only liable, if the holder of the promissory note elects to enforce the note against him and not the other co-makers. Even if the holder elects to enforce the note against a particular co-maker, the maker has a right of contribution against the other co-makers. The learned authors of ***Chitty on Contracts (General Principles)*** (27th Ed) say at [para] 17-014:

Joint and joint and several debtors have a quasi-contractual right of contribution among themselves: that is to say, if one has paid more than his share of the debt, he can recover the excess from the other in equal shares, subject to any agreement to the contrary. In the absence of agreement to the contrary each co-debtor is liable for an equal share of the debt or obligation ... The right of contribution is independent of any present right of the principal creditor. Thus one co-debtor can recover contribution from another although the principal creditor`s right to recover from that other debtor has become statute-barred.

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25.In our judgment, the instrument of 15 April 1997 executed by the respondent alone was intended to be a joint and several promissory note, and the appellants could not seek to enforce the note against the respondent as if the respondent were the maker of a sole maker promissory note. To do so would be to impose upon the respondent a liability which is different from that which he had undertaken. We were therefore in agreement with the learned judge that the respondent could not be held liable under the second instrument. The appeal therefore failed and was dismissed.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

K Gopalan (Raja Loo & Chandra) for the appellants
Dixon Ng Bock Hoh (Ng Isaac Partnership) for the respondent

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