IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 160

Suit 304/1999, RA 201/1999

Between

Asia Sawmill Company Private Limited (In Liquidation)

… *Plaintiff*

And

Tan Bak Liang trading as Liang San Construction

… *Defendant*

GROUNDS OF DECISION

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

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Asia Sawmill Company Private Limited (In Liquidation) v Tan Bak Liang trading as Liang San Construction

[1999] SGHC 160

Suit 304/1999, RA 201/1999
Choo Han Teck JC
21 June 1999

JUDGMENT:

GROUNDS OF DECISION

1. This is an appeal against an order by the learned assistant registrar granting summary judgment to the plaintiff company Asia Sawmill Company Pte Ltd (in liquidation). The defendant Tan Bak Liang carries business under the name of Liang San Construction ("Liang San"). Liang San agreed to provide sub-contract services to a piling company called Kheng Kee Piling Pte Ltd. It was agreed that Asia Sawmill, which has a common director with Kheng Kee, would provide reinforced concrete ("RC") piles to Liang San Construction in the course of its work. In this action, the liquidator of Asia Sawmill is claiming a sum of $612,871.20 being the unpaid price of RC piles supplied to Liang San over a period of time. This sum was subsequently amended to $591,755.65 after counsel for the plaintiff conceded that his client was not entitled to legitimate discounts given on the price. The liquidator obtained summary judgment before the assistant registrar and Liang San appealed before me for leave to defend.

2. Counsel for Liang San submitted that they have a defence of set-off and estoppel. Tan Bak Liang ("Tan"), the proprietor of Liang San deposed in his affidavit that he had an oral agreement with Asia Sawmill and a company called Kheng Kee Piling Co Pte Ltd in which Kheng Kee would subcontract piling works to Liang San and also supply RC piles to it through Asia Sawmill. Money payable to Asia Sawmill for such piles would be set-off against money payable by Kheng Kee to Liang San for the sub-contract work. This tripartite agreement was concluded between Tan and Teo Chin Lam ("Teo") who was a director of Asia Sawmill as well as Kheng Kee. Kheng Kee owned 80% of the shares in Asia Sawmill. Tan deposed that as at 31 December 1997 the accounts were finalised among the three parties as follows:

> Kheng Kee owes Liang San $453,302.09;
> Liang San owes Kheng Kee $75,515.69;
> Liang San owes Asia Sawmill $591,755.65

On 25 July 1998 Tan went to Kheng Kee's office and finalised the accounts as follows:

> Kheng Kee owes Liang San $735,356.11;
> Liang San owes Kheng Kee $44,922.91;
> Liang San owes Asia Sawmill $213,969.25.

3. Tan avers that by reason of the agreement to set off the respective debts, Liang San no longer owes Asia Sawmill any money whereas Kheng Kee still owes Liang San $476,463.95. Kheng Kee was ordered to be wound up on 25 September 1998.

4. It cannot be disputed that the conventional set-off does not apply in this case because there was no mutuality of debts between Asia Sawmill and Liang San.

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The true basis of Liang San's defence as appears from Tan's affidavit is founded on contract, namely the agreement reached between Teo and himself that the debts of the three companies concerned be "squared off". If he is right, then the money owing by Liang San is deemed to have been paid in consideration that the money owing by Kheng Kee to Liang San be deemed similarly paid by the equivalent amount. The problem for Liang San here is that although Teo is a director of both Kheng Kee and Asia Sawmill, from Tan's affidavit, it appears that Teo and Tan were settling the debt of Kheng Kee to Liang San. There is no clear evidence that Asia Sawmill was specifically represented and consented to payment in that form. It was a form of settlement that was not in the interests of Asia Sawmill, and I think that in such circumstances, there must be some evidence that Asia Sawmill had agreed to it independently. There is no such evidence before me.

5. Counsel for Liang argued that the liquidator is estopped from reneging from the agreement between the parties. She submitted that Liang San is prejudiced because Kheng Kee had already been wound up. This argument fails on two counts. First, as I have stated, there was no evidence of any representation by Asia Sawmill to Liang San. All the representations, if true, were made by Teo as a debtor of Liang San. It was clearly stated by Tan in his affidavit that he was chasing Kheng Kee for payment. The agreement was concluded between Teo and Tan. The statement of accounts relied upon by Tan at page 97 and 98 of his affidavit was set out in letter form on Kheng Kee's letterhead and addressed to Liang San. The confirmation of the accounts were signed by Teo on behalf of Kheng Kee and Tan on behalf of Liang San. There was no signature on behalf of Asia Sawmill.

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6. Secondly, any estoppel that might have arisen against Asia Sawmill in these circumstances does not bind the liquidator. On the assumption that a representation as alleged was indeed made, it was made by the company Asia Sawmill as Liang San contends. It is not alleged that the liquidator made it or was privy to it in any way. On that basis, Liang San's case would still fail at the threshold because the defence of estoppel operates only against the person who made the representation whether by himself or his agent. The liquidator was not in the circumstances of this case the agent of Asia Sawmill. The thrust of Liang San's case is that the defence of estoppel operates against Asia Sawmill and, therefore, also against the liquidator who has now stepped into the shoes of the company. Counsel for Liang San argued that the representation would have been effective if the company was not being wound up. The simple answer is that in such a situation, only the rights of the representor and representee are involved. When a company is wound up and a liquidator appointed, the latter has a statutory duty to consider the rights of all creditors and not just the representee alone. His duty would be hampered if he is bound by all that the company has said or done. There are, of course, acts of the company which he as liquidator must accept namely, all legitimate contracts entered into by the company. The set-off agreement in this case as it is pleaded and shown through the affidavits do not indicate such an agreement. If at all, they disclose a breach of fiduciary duty of Teo as a common director of Kheng Kee and Asia Sawmill in the discharge of his duties as director of Asia Sawmill. He knew that Kheng Kee was unable to pay the appellant. He clearly ought not agree to set-off Kheng Kee's debt with the debt owed by the appellant to Asia Sawmill.

7. The principle that a liquidator may not be estopped by representations made by the company was fully explored in *Re Exchange Securities & Commodities [1988] 1 Ch 46.* This case concerned the application by the liquidator of two

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companies in liquidation for directions. The two companies were related and were involved in the business of speculating internationally in commodities. It transpired that they had reported fictitious profits to some investors. In the course of the liquidator's applications the question of whether the liquidator was estopped by the representations of the companies in respect of the fictitious profits. Harman J held that he was not. The question to be asked is whether the estoppel will defeat the statutory scheme (of liquidation). Harman J held that it would because it would permit fictitious creditors to deplete the company's assets. This case before me may not involve a fictitious creditor or claim, but the answer would be the same because the alleged agreed set-off by Asia Sawmill, if at all (I have found on the documents and defendant's affidavit that there was no agreement by Asia Sawmill), was clearly made in bad faith by an errant director, and ought not bind the liquidator. This appeal was consequently dismissed.

- Sgd -

Choo Han Teck

Judicial Commissioner

Choo Han Teck JC

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Felicia Ng [Piah Tan & Partners] for the defendant/appellant
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