Sutanto Henny v Suriani Tani also known as Li Yu and Another
[2004] SGHC 7

Case Number : Suit 275/2003/F, RA 269/2003/S

Decision Date : 14 January 2004

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Lee Mun Hooi and Wong Nan Shee (Lee Mun Hooi and Co) for plaintiff; Julian Tay Wei Loong (Lee and Lee) for second defendant

Parties : Sutanto Henny — Suriani Tani also known as Li Yu; Chandra Suwandi t/a M/s Global Standard Marketing

Bills of Exchange and Other Negotiable Instruments – Cheques – Whether cheques were drawn by agent with principal's authority – Whether there was sufficient consideration – Whether non-presentment for payment precluded holder from suing.

Civil Procedure – Striking out – Whether the plaintiff's claim is hopeless or unarguable.

1 This is an appeal by the plaintiff arising from a decision of Assistant Registrar Dawn Tan allowing the second defendant's application to strike out the plaintiff's claim as disclosing no reasonable cause of action, or as being frivolous and vexatious or an abuse of process. I allowed the plaintiff's appeal. The second defendant has on 4 November 2003 appealed against my decision.

2 The facts of the case are comparatively short. The plaintiff is Henny Sutanto ("Sutanto") and the first defendant is Suriani Tani, also known as Li Yu ("Suriani"). The latter is the sister-in-law of the second defendant, Chandra Suwandi ("Chandra"). Chandra is the owner of a sole proprietorship, Global Standard Marketing ("Global"). Sutanto had from time to time made loans to Suriani in the total sum of $670,000. In purported partial repayment of the loans, Suriani gave Sutanto five cheques. Two of the cheques for the total sum of $150,000 were apparently drawn on Suriani's account. The other three cheques for a total sum of $515,000 were drawn on Global's account with United Overseas Bank Limited, Bukit Timah branch ("UOB account"). The three UOB cheques are: no 281249 dated 26 December 2001; no 021297 dated 26 January 2002 and no 021300 dated 30 January 2002.

3 The three UOB cheques were not presented for payment on their respective due dates. According to Sutanto, she did not present the UOB cheques for payment as she was told by Suriani not to do so. During the proceedings, it transpired that Suriani had on or before 28 January 2002 placed a stop payment notice on all three cheques drawn on Global's UOB account. In this action, the plaintiff as holder of the three UOB cheques is suing the second defendant as drawer.

4 On 9 May 2003, Sutanto obtained default judgment against Suriani.

5 The circumstances under which a court will strike out a claim under O 18 r 19 of the Rules of Court (Cap 322, R 5, 1997 Rev Ed) have been discussed in many authorities (see *The Osprey* [2000] 1 SLR 281; *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] SLR 798). As this is a summary process, the legal position is that the power should only be used in "plain and obvious cases" where the claim is simply unarguable.

6 On the striking out of an action as disclosing no reasonable cause of action, the Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 held that as long as the statement of claim disclosed some cause of action, or raised some question fit to be decided at trial, the action should not be struck out. The fact that a case is weak and is not likely to succeed is not a

ground for striking out. As for the words "frivolous and vexatious", they have been interpreted to mean actions which are "obviously unsustainable" or "wrong" (see *Singapore Court Practice 2003* (LexisNexis, 2003) at 538).

7 Applying the well-accepted principles explained in the authorities in relation to striking out hopeless cases, I am not convinced that it is sufficiently clear at this stage of the proceedings that, as a matter of fact and law, there is no legal basis to sue the second defendant. The facts upon which the legal basis is founded are not yet established. Depending upon how the evidence emerges at trial, the claim may not be made out, but at this stage, I cannot say that it is hopeless or unarguable.

8 Counsel for the second defendant, Mr Julian Tay, argues that the second defendant is not the drawer of the three UOB cheques as he was not the signatory. Therefore, the plaintiff has no cause of action against the second defendant. A "drawer" has been defined as "the person who signs a bill of exchange giving an order to another person, the drawee, to pay the amount mentioned therein" (see *Thomson's Dictionary of Banking*, (11th Ed, 1965) at 231). Section 23(1) of the Bills of Exchange Act (Cap 23, 1999 Rev Ed) ("the Act") provides that no person shall be liable as drawer, indorser or acceptor of a bill who has not signed it as such.

9 I was not persuaded by counsel's submission. Whilst it is not disputed that it was Suriani who had signed the three UOB cheques, the second defendant could be sued as drawer if the UOB cheques were signed on his behalf. The plaintiff would have the right to enforce payment through or under that signature. Section 26(2) of the Act provides that in determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument is to be adopted.

10 The name of Global as the account holder was printed on the UOB cheques. Suriani was an authorised signatory on the UOB account and was allowed to sign cheques on behalf of the second defendant in her own name. It is not possible to tell from the UOB cheques if Suriani's authority to sign was limited. The agreement contained in the Mandate Application dated 6 July 1998 empowered Suriani to draw and sign cheques and she was also empowered to "act as fully and effectually for all intents and purposes as ... [Chandra] could if personally present and acting in the transactions aforesaid". There was also Chandra's acknowledgement in the Mandate Application that any authorised signatory's acts are his.

11 The real issue then is whether Suriani had authority to draw the three UOB cheques and whether they were delivered to the plaintiff with the second defendant's authority. Of relevance is also the question, especially in today's commercial context, whether the apparently unqualified signature of Suriani is capable of constituting the second defendant the drawer of the UOB cheques. These questions can only be properly considered and decided after all the evidence has been given at the trial.

12 The three UOB cheques were given to Sutanto as part payment of the loans. Sutanto said she did not know that Suriani had no authority to draw the UOB cheques. Chandra stated in his affidavit, by way of submission rather than facts in evidence, that Sutanto knew or ought to have known that Suriani had no authority to draw the UOB cheques. He also asserted that Suriani had no authority to use the UOB account for her personal matters. There was no allegation that the use of the UOB cheques was a fraud on the second defendant. There was no explanation as to why Suriani told Sutanto not to present the cheques for payment and why Suriani herself gave a stop payment notice to UOB on 28 January 2002. The intention of the signatory is of importance, and it will have to be determined by extrinsic evidence. No evidence on such matters was before me.

13 The second defendant's other contention is that he has had no dealings with the plaintiff and he did not borrow money from the plaintiff. In short, there was no consideration for the three UOB cheques (see s 27(1) of the Act).

14 The three cheques were post-dated. This is evident from the tenor of para 10 of the plaintiff's affidavit affirmed on 16 June 2003 and from the stop payment notice to UOB. That notice identified all three cheques, one of which had a date that is later than the date of the stop payment notice. When a cheque has been post-dated, in the absence of express evidence, it is possible to imply a promise to forbear from claiming the debt from the drawer until the date of the post-dated cheque. That forbearance is sufficient consideration. Where the debt or liability is that of a third party (*ie* Suriani), the matter is a question of evidence.

15 By s 30(1) of the Act, every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value. If the second defendant is held to be the drawer, then the effect of this presumption is to shift the burden of proof from the plaintiff who relies on the post-dated cheques to the second defendant.

16 Another point raised is that the drawer is discharged from liability, as the plaintiff had not presented the UOB cheques for payment (see s 45 of the Act). Counsel for the plaintiff, Mr Lee Mun Hooi, argues that the need for presentation was waived expressly or impliedly as the plaintiff was told not to present the UOB cheques for payment. A notice of dishonour was not required, as the drawer had countermanded payment.

17 Mr Lee relied on the case of *Ng Kim Lek v Wee Hock Chye* [1971] 1 MLJ 148. In that case one of the cheques was not presented for payment at the request of the defendant. The court held that the plaintiff was not precluded from suing on it. Mr Tay did not refer me to any authority disapproving or distinguishing *Ng Kim Lek v Wee Hock Chye*.

18 Mr Lee contends that in any case the plaintiff is nonetheless a holder in due course. Mr Tay submits that although a payee is included in the definition of a "holder", a payee is not a holder in due course. A holder in due course, under s 29(1) of the Act, is a person to whom a bill has been negotiated; and negotiation under s 31 of the Act requires transfer by negotiation. For the same reasons, the plaintiff also cannot rely on the presumption of a holder in due course under s 30(2) of the Act because she was the person to whom the bill was originally delivered and in whose possession it remained. Mr Tay referred me to *Byles on Bills of Exchange and Cheques* (27th Ed, 2002) at 246 [19-08] to support his contentions.

19 Mr Lee in response referred me to the *dictum* of Fletcher Moulton LJ in *Lloyd's Bank, Limited v Cooke* [1907] 1 KB 794 at 807–808:

> I next find that in s 30, sub-s 2, of the Act it is provided that "every holder of a bill is prima facie deemed to be a holder in due course," and that, if it is wished to dislodge him from that position, it must be [shown] that there has been fraud or some other like circumstance in connection with the bill before it reached his hands, and even this only shifts the burden of proof and makes it incumbent on him to prove that he gave value in good faith.
>
> These provisions specifically give to the payee the prima facie status of a "holder in due course," and, if he can [show] that value has in good faith been given by him for the bill, that prima facie status cannot be displaced.
>
> It is suggested, however, that these conclusions are negatived by the language of s 29, sub-s 1,

which states the conditions under which a person is a "holder in due course." I can find nothing in the language of that sub-section which throws any doubt on the view that "holder in due course" would include a payee who has given value in good faith, unless we are to construe the word "negotiated" as being merely equivalent to "indorsed". But, when the definition of "negotiation" given by s 31, sub-s 1, is looked at, it appears clear that the Legislature intended to make it apply also to the original operation of transferring the bill to the payee. It lays down that "a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill." It carefully abstains from prescribing that the transferor must be a "holder." All that is necessary to constitute "negotiation" of the bill is that it should have been transferred from one person to another in such a manner as to constitute the transferee the "holder of the bill," i.e. – if we replace "holder" by its definition in the Act – "payee or indorsee who is in possession of the bill." A cheque, therefore, payable to a particular person, which is handed by the drawer to that person for value, would be "negotiated" within the meaning of the Act.

20 It was not brought to my attention at the hearing that the *dictum* of Fletcher Moulton LJ was in fact disapproved in the later decision of *R E Jones, Limited v Waring and Gillow, Limited* [1926] AC 670. This remiss is unsatisfactory as the *dictum* was an added reason for ruling in the plaintiff's favour.

21 Be that as it may, I have already mentioned the other features of the case where I have said that the evidence adduced did not permit a resolution of the arguments by summary disposal of the claim. It seems to me that once it appears that there is a real question to be determined, whether of fact or law or both, and that the rights of the parties depend upon it, then it is not appropriate for the court to strike out the action as disclosing no reasonable cause of action, or as being frivolous and vexatious or an abuse of process.