

Han Min v First Commercial Bank and Others (First Commercial Bank, Third Party)
[2002] SGHC 108

Case Number : Suit 944/2000
Decision Date : 20 May 2002
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Davinder Singh SC, Jimmy Yim SC, Julian Kwek, Eugene Quah and Sameer Advani (Drew & Napier) for the plaintiff; Alan Wong Hoi Ping and Wee Hsiang Ling (William Lai & Alan Wong) for the first defendant/third party (up to 27 December 2001); Michael Hwang SC and Valerie Tan (Allen & Gledhill) for the first defendant/third party (from 27 December 2001); R Palakrishnan SC and Malathi Das (Palakrishnan & Partners) for the second defendant (up to 19 October 2001); Hee Theng Fong and Chua Ai Chun (Hee Theng Fong & Co) for the third defendant (up to 17 October 2001)
Parties : Han Min — First Commercial Bank; Kyone Yeom Group Co Pte Ltd; Hu Hua alias U Kyaw Myint — First Commercial Bank

Judgment

GROUND OF DECISION

1. The plaintiff in these proceedings, Han Min, is a customer of the first defendant, First Commercial Bank ("the bank"). The second defendant Kyone Yeom Group Co Pte Ltd ("KYGC") is also a customer of the bank. The third defendant Hu Hua is a director and majority shareholder of KYGC.
2. Each party was represented in court when the hearing started, but counsel for the second and third defendants discharged themselves in the course of the trial and thereafter these two defendants were not in court themselves or by counsel to present their defences.
3. The plaintiff's relationship with the bank had commenced when an account was provisionally opened for him on 14 August 2000. After that, the plaintiff remitted HK\$8,799,600 to the account on 18 August ("the first remittance"), followed by a further sum of HK\$339,600 on 22 August ("the second remittance").
4. The plaintiff came to Singapore on 23 August. He went to the bank to attend to the formalities of opening the account, and he gave instructions that the two remittances were to be placed in monthly fixed deposits.
5. His next visit was on the following day 24 August when he signed a document. The document executed is a memorandum of lien ("the first memorandum"). The effect of this document is to pledge the deposits to the bank as security for facilities the bank granted to KYGC.
6. The first and second remittances were followed by two other remittances on 22 September in the sums of HK\$1,019,600 and HK\$8,179,600. The plaintiff then made another visit to the bank on 25 September. During this visit, he had his deposits converted into Singapore currency. He also signed another memorandum of lien ("the second memorandum"). The effect of this document is to pledge all the four deposits to the bank as security for facilities extended to KYGC. When KYGC defaulted on its repayments to the bank, the bank uplifted the plaintiff's deposits under the first and/or second memorandum to set-off the debt.
7. The plaintiff claimed that he did not know that the two documents he executed were pledges and

that he was misled by the officers of the bank into signing them. In these proceedings he primarily wanted the memoranda to be declared null and void and his deposits to be restored.

8. His claim against KYGC was based on the premise that if the bank was entitled to uplift his deposits, he was entitled to be indemnified by KYGC as it was the borrower. The plaintiff also claimed that if these deposits were uplifted, he was entitled to contribution from Hu Hua as a co-surety because Hu Hua had given a guarantee to the bank for KYGC's facilities.

9. Hu Hua took out third party proceedings against the bank. His claim proceeded on the basis that the guarantee he gave to the bank in connection to facilities granted to KYGC was not valid and that he was entitled to be indemnified by the bank for any liability that he may incur towards the plaintiff as a co-surety.

The plaintiff's case

10. The plaintiff is a Chinese national and resident. He was born in 1968, so he was about 32 years old when the events occurred. He was educated in the Chinese medium. After completing school he obtained a diploma in Enterprise Management from Shenzhen University in 1987. He was taught basic English in school and university, but he had largely forgotten it because he did not use it. He had invested well in the stock market in China and accumulated some wealth.

11. He visited Singapore in August 1999 and was impressed with what he saw, and intended to settle himself and his family here. In July 2000 he applied for permanent residence for himself and his family. He engaged Dr Choong Chow Siong ("Choong") of Choong Management Consultants Pte Ltd to advise and assist in the application. He was informed that he could participate in an investment scheme with the Economic Development Board under which he would have to invest \$1.5m within three months of obtaining in-principle approval of his application. To demonstrate the seriousness of his intention, the plaintiff stated in his application that he would make the investment within half a month of the in-principle approval. He was also considering buying a family home and had viewed some apartments with a housing agent.

12. When he was preparing to remit his funds to Singapore, a business associate in China, Mdm Long Qiong Zhen recommended that he remitted them to the First Commercial Bank. Mdm Long was also a business associate of Hu Hua and recommended the bank because of Hu Hua's close connections with it.

13. The plaintiff made the first two remittances to the bank before completing the formalities for opening an account. He followed that up by coming to Singapore on 22 August. Hu Hua whom he had met in China through Mdm Long received him with warm hospitality. He hosted a dinner for him, put him up in a suite at Raffles Town Club and arranged for a secretary and a car to take him to the bank.

14. When he went to the bank the next morning, he was received and attended to by Cheng Jung-Sen ("Cheng") and Wu Tzyy-Arng ("Wu"), both Assistant Vice-Presidents and Deputy General Managers of the bank. He signed some documents which Cheng explained to him and left. In the afternoon he returned to the bank after he was informed by Hu Hua that he needed to sign further documents. Cheng suggested that he put his money in fixed deposit. When he expressed concern over his access to the funds, Cheng assured him that he would still have access to the funds if they were placed in renewable monthly deposits. He accepted the advice and signed a fixed deposit agreement.

15. The next morning Hu Hua told him to go to the bank again and sign some more documents. When he arrived at the bank Cheng produced another document for him to sign which Cheng explained would make it possible for future remittances to be placed in fixed deposits without his attendance at the bank. He signed the document and left the bank without being given a copy of it. At that time the blank spaces in the document were not filled except for his signature and his Singapore address. (This document is the first memorandum of 24 August).

16. On 25 September the plaintiff made another visit to the bank. His intention was to convert his Hong Kong currency deposits to Singapore currency, and to transfer them to the United Overseas Bank ("UOB") where he also had an account. Cheng attended to him and told him that the bank can convert the deposits for him at an attractive exchange rate. After verifying the rates he took up the suggestion and instructed the deposits be converted, thereafter \$4m was to be retained in the bank and the balance \$110,311.22 transferred to his account at UOB. He confirmed his instructions by signing on the deposit slips for the four deposits. He also signed another document which Cheng said was required to facilitate the conversion. (This document is the second memorandum of 25 September). No copies of these documents were given to him.

17. He returned to China on 30 September. Just before he left, he asked his friend Kenny Cai Wen Xing ("Cai") to check with the bank on the conversion on his behalf. On 6 October Cai telephoned and informed him that he had been to the bank and obtained a document which appeared to be a pledge.

18. On hearing this, he decided to come to Singapore to investigate. On 9 October, he went to the bank with Choong and they saw Cheng. He informed Cheng that he wanted to withdraw his deposits but was told that he could not do that because they had been pledged to secure loans given to Hu Hua. Cheng gave him two copies of the document he signed on 24 August, with some of the blanks filled up.

19. Later that day he went to Cai's house, which was also his Singapore address for his account with the bank. Cai gave him some documents the bank had sent there, including the deposit slips he signed on 25 September, each bearing a red stamp that was not there before. Cai also handed to him the document he collected from the bank on 6 October. This was a copy of the document he signed on 25 September (the second memorandum).

20. On the following day he consulted Choong on the documents and was told that the stamp on the deposit slips indicated that they were pledged. That afternoon they went to the bank again. They met with Cheng and Wu and asked to see the second memorandum. After waiting for about 45 minutes, they were given a copy of the second memorandum with the spaces previously left blank now filled in. He asked to see the document but it was not produced. Instead the copy was certified as a true copy and handed to him. When they insisted on inspecting the original, Wu told them it was not possible because the document was being examined by officers of the Monetary Authority of Singapore at that time – a reason subsequently acknowledged to be untrue.

21. He was unhappy over the lien, and when the bank uplifted his deposits because KYGC failed to repay its loans, he commenced these proceedings.

The bank's case

22. The bank's response to the plaintiff's complaints was quite remarkable, particularly for an establishment such as a bank. When the plaintiff's solicitors at that time Joo Toon & Co, wrote to the bank and stated that the memorandum of 24 August had relevant details left blank when it was

signed, the bank's solicitors Chee & Teo replied on 24 October to deny that in clear terms –

Our clients' banking practice do not allow customers to sign blank documents.

Your client's allegation of signing on a 'blank document' is untrue. The Memorandum of Lien contained *important details such as Name of the borrower and date which were inserted before your client executed the same.*

(Emphasis added)

23. The bank retracted from this position later. Wu explained that the position was taken because the bank misunderstood a blank document to be a blank piece of paper when it instructed Chee & Teo on the matter. This explanation did not accord with the fact that the plaintiff was not complaining of signing on blank sheets, and the reply referred specifically to a memorandum of lien.

24. After the action was commenced the bank referred to the execution of the two memoranda in its defence, then it amended it substantially. In the amended defence it reversed itself on the events leading to and following the execution of the two memoranda.

25. In the defence filed on 6 December 2000, the bank pleaded in connection with the events of 24 August that (i) the memorandum was signed by the plaintiff "in escrow" with the particulars to be filled in later, (ii) Cheng and Wu *did not explain the contents, meaning and effect* of the document to the plaintiff because he did not request for it and (iii) it was "not the bank's usual practice to give customers copies of the forms which they had signed unless specifically requested for by the customers", and *no copy was given* to the plaintiff because he did not request for it. In the amended defence filed on 21 February 2001, the bank pleaded that (i) the memorandum was signed in blank, (ii) Wu produced the memorandum and *explained its nature, contents and effects* and (iii) the plaintiff was *given a copy* of the document because he had asked for it.

26. In relation to the events of 25 September and the second memorandum the bank pleaded in its defence that *no copy of the memorandum was given* to the plaintiff because he had not requested for it. In the amended defence, however, the position taken was that *a copy of the memorandum was given* to the plaintiff upon his request, and that "Cheng/Wu" explained it to the plaintiff before he signed it.

The issues

27. Many issues were raised in the pleadings and the submissions, in my view too many. Some were not developed or followed up in the closing submissions and others were dealt with at length which were not really germane to the basic dispute or its determination.

28. Keeping the focus on the dispute, I see the issues to be –

- (i) whether the plaintiff read and understood the memoranda on his own,
- (ii) whether the memoranda were properly explained to him when he signed them,
- (iii) whether copies of the memoranda were given to him when he signed them,
- (iv) whether he had agreed to pledge his deposits to secure KYGC's facilities, and

(v) whether the bank had reason to obtain the pledges without his knowledge.

Whether the plaintiff read and understood the memoranda on his own

29. The plaintiff had the memoranda before him when he signed them. If he could read them on his own, he would have known what he signed without explanation from anyone.

30. The plaintiff said that he could not read them with his limited knowledge of English, but counsel for the bank contended that with eight years' instruction on the language in school and university, the plaintiff would be able to read the memoranda. The memoranda were not written in simple English but in typical legal manner which a person conversant in English with no legal training may find difficult to understand.

31. There was really nothing to suggest that the plaintiff was more conversant in English than he claimed. He dealt with Cheng and Wu in Mandarin, and wrote to the bank in Chinese, and there was no evidence that he had conversed or corresponded with anyone in English. In any event, there was little incentive for the plaintiff to try and read and understand the memoranda on his own when the bank officers had explained them to him. (The dispute is not whether explanations were given, but whether proper explanations were given).

Whether the memoranda were properly explained to the plaintiff

The first memorandum

32. The bank stated in its defence that it was not explained to the plaintiff, then it asserted in the amended defence that "Cheng/Wu" had explained it. The bank's evidence created further confusion because Wu said at one stage that he explained the nature of the document, then he said he did not explain it. Cheng on his part deposed that he explained the nature of the document to the plaintiff.

33. The plaintiff's complaint was that he did not know that he was signing a pledge. If Cheng and Wu explained the nature of the memorandum to the plaintiff, why did the bank state in its defence that there was no explanation? Wu could only say that there was miscommunication of the instructions because they did not explain the entire lien, only the nature of it. This did not accord with the defence that neither he nor Cheng explained the *contents, meaning and effect* of the document, if they both had explained its *nature*. If the plaintiff was told of the nature of the memorandum, he would have known that it was a pledge, and that should have been pleaded.

The second memorandum

34. The bank's defence was silent on whether this memorandum was explained to the plaintiff. The amended defence asserted that it was explained to him by "Cheng/Wu" Neither of them said that in their affidavits of evidence-in-chief. Wu in his evidence in court took the opposite position when he said that because the first memorandum was explained already, the second memorandum was not explained by him or Cheng.

Whether copies of the memoranda were given to the plaintiff

The first memorandum

35. The bank reversed its position on whether a copy of the first memorandum was given to the plaintiff. Cheng's explanation was that initially he could not recall very clearly whether he had given it, but he remembered that later. Again this did not tie in with the defence which was positive in its terms that the plaintiff did not ask for a copy and was not given one.

36. The plaintiff also contributed to the confusion. The List of Documents filed on 16 January 2001 by his original solicitors, Joo Toon & Co included a blank copy of the first memorandum, but no such document was produced for inspection. Their successors explained that the document was listed in error and pointed out the plaintiffs' position before and in the commencement of the action on 9 November 2000 had been consistent that he was not given a copy of the document, but no clear explanation was offered as to how the mistake occurred.

The second memorandum

37. The plaintiff's case is that he did not have a copy of this memorandum until Cai obtained a copy of it from the bank on 6 October.

38. In its defence the bank defence agreed that he was not given a copy, but turned around in its amended defence and asserted that a copy of the lien was given to him.

39. In his affidavit of evidence-in-chief Cai deposed that the plaintiff had asked him on 30 September to go to the bank to check on the conversion of the plaintiff's deposits. He did not go to the bank till 6 October. When he went to the bank Cheng referred him to Ms Tan Bee Kuan ("Ms Tan"). Ms Tan brought out a file and showed him a deposit slip bearing the notation \$4m and the interest rate.

40. He noticed another document in the file, a blank document bearing the plaintiff's signature, which Ms Tan said was a guarantee. He asked for, and was given a copy of it. (The document exhibited by Cai in his affidavit of evidence-in-chief is a blank Memorandum of Lien on Fixed Deposits with the blanks empty except for the plaintiff's signature and Wu's signature as witness. This document with the other blanks filled in is the second memorandum.)

41. That evening a friend told him it was a pledge or guarantee of some sort. He telephoned the plaintiff and told him about the document. The plaintiff's response was that he had not signed any pledge or guarantee and that he would bring forward his trip to Singapore to find out more.

42. Ms Tan agreed that Cai saw her on 6 October. She deposed in her affidavit of evidence-in-chief that "I showed him the Memorandum of Lien of Fixed Deposit with particulars filled in dated 25th September 2000" and informed him that it was for the plaintiff to pledge his deposit to KYGC, and "(a)fter seeing the said document he said he did not require a copy of it anymore."

43. In her evidence in court she was less certain about the document she showed him. She said she took out the lien from a file and showed it to Cai. She did not look at the date of the lien and believed it to be the one dated September. She knew that the plaintiff had signed an earlier memorandum and asked Cai which memorandum he wanted, but Cai was undecided and wanted to check with the plaintiff. (This account contradicted her affidavit and the amended defence that Cai did not want a copy.)

44. Her evidence was also inconsistent with the amended defence which stated that she had taken a

file, not just one document, and showed it to Cai. When this was brought to her attention her response was that she had objected to this part of the amended defence, but nothing was done about it.

45. Questions rose from her evidence. Why did she take out one memorandum when she knew there to be two of them? Why did she or Cai not do the reasonable and sensible thing and take copies of both documents? If Cai wanted to seek the plaintiff's further instructions, why was that not stated instead of saying and pleading that he did not want a copy of the document? If she objected to the mistake in the amended defence, why was that ignored?

Whether the plaintiff agreed to pledge his deposits to secure KYGC's facilities

46. The plaintiff's case is that he did not know of KYGC and had not agreed to pledge his deposits to secure its facilities. KYGC is a company controlled by Hu Hua in which the plaintiff had no interest, and with which he had no dealings. The plaintiff and Hu Hua had agreed to go into a joint venture to invest in the stock market in China with funds to be provided by Hu Hua. The venture was conceived during the plaintiff's visit to Singapore in August. It did not involve KYGC in any way, and was aborted in the following month.

47. There appears to be very little reason or purpose for the plaintiff to pledge his deposits for the benefit of KYGC. He had earmarked part of the funds to secure permanent residence for himself and his family, and he would need funds to buy a house. By pledging the deposits, his funds cannot be used for either purpose.

48. He was anxious that his funds were not tied up. Cheng confirmed that the plaintiff wanted to be assured that he would be able to withdraw the deposits when he needed to. Yet Cheng's evidence was that when the plaintiff visited the bank on 25 September to withdraw all his funds and was advised that he could only withdraw the third and fourth deposits, he gave instructions to pledge all four remittances.

49. Cheng's account of the plaintiff's behaviour was quite extraordinary. He started off wanting to withdraw all his money, and when told he could only withdraw a part of it, he not only decided not to withdraw what he can, but proceeded to pledge the balance as well.

Whether the bank had reason to obtain the pledges without the plaintiff's knowledge

50. Underlying the allegations and disputes is the question why the bank would obtain the plaintiff's pledges by stealth as he alleged. A bank would want to keep its customers, and would not do anything to antagonise them unless there is some cause for it.

51. To deal with this question it is necessary to examine Hu Hua's and KYGC's relationship with the bank. Hu Hua evidently presents himself very well to people he met. He created a favourable impression on the plaintiff. Mr Lin Hann-Chyi, the bank's General Manager testified that he was happy to have him as a client, and considered his company as a customer of great potential as Hu Hua had declared his intention to locate his financial centre in Singapore.

52. KYGC sought facilities from the bank by an application form dated 11 February 2000. The application submitted was for US\$5m secured overdraft and US\$50m for trust receipts. Added to these in handwriting was an application for \$200,000 unsecured overdraft which was inserted on

Cheng's instructions.

53. The bank made two offers in response to this application. The first was on 21 February offering US\$5m in secured overdraft and the same amount in trust receipts. The second offer of 22 February was for the same facilities and an additional line of \$200,000 unsecured overdraft.

54. Ms Tan Bee Kuan (the same officer who dealt with Cai), a Special Grade Clerk with 20 years service with the bank processed the application. She had written in the additional facility into KYGC's application form on the instructions of her manager. She wanted KYGC to submit a new application for all three lines, but the company did not return the form that she despatched to it for that purpose. She had also requested for the financial statements of KYGC and a board resolution accepting the offered facilities.

55. Of the documents required, she only received the board resolution, and only in July. She nevertheless processed the application without the absent documents, and prepared a credit report on 17 July in which she concluded that the company was technically insolvent with current liabilities exceeding current assets by \$998,705.

56. Nevertheless the unsecured line was offered. Not only that, it was allowed to be operated by KYGC even before the offer was made or accepted, when the company drew five cheques on the line between 17-21 February.

57. Ms Tan was questioned on these unusual happenings -

Q: So this would be a unique case because there was non-compliance, unsecured credit line of \$200,000, yet the account was activated for several months?

A: I can't answer the question. You must ask my manager.

Q: In your recollection, has there been any other case beside KYGC of an unsecured loan, where documentation is not complete, no financial statements or credit report, yet the loan is activated?

A: No.

Q: The full \$200,000 was utilised before your credit report?

A: Yes.

Q: Wouldn't you, with your 5 years experience regard this as an unusual experience?

A: I rather not answer. I cannot say it is usual or unusual. It is a rare occurrence.

58. A picture emerges of a favoured client being accorded special treatment. This setting lends credibility to the plaintiff's complaint that the bank misled him into signing the two memoranda so that KYGC can draw on its secured line. The bank's revolving positions and the bank officers' evidence did little to dispel that.

59. The plaintiff's complaints raise serious charges against the bank which must be considered

carefully. I took into account all the evidence, particularly the plaintiff's reasons for sending his funds to Singapore, his relationship (actually the absence of it) with KYGC, and the bank's case on the execution of the memoranda and the management of the KYGC account before arriving at my findings.

My findings

60. After examining and reviewing the matters carefully, I find that the plaintiff had proved on a balance of probabilities that he was not aware that the documents he executed were pledges, and that he had been misled by the bank officers.

61. I accept that the plaintiff was not able to read and understand the memoranda on his own. I do not accept that either Cheng or Wu had explained the true nature of the documents to him, or had given him copies of them. Between the accounts of Cheng and Wu and that of the plaintiff, I prefer the plaintiff's evidence on the explanations given. I find that the plaintiff had not intended or agreed to pledge his deposit to secure KYGC's facilities.

62. In the result I declare that the memoranda are not binding on the plaintiff and I order that his deposits are to be restored together with such interest which would have accrued had they not been uplifted. I leave it to the parties to compute the quantum of interest, and if they cannot agree, the matter is to be referred back to me. The plaintiff shall also have his costs from the bank, and I order that they be taxed for two counsel.

63. As the plaintiff had proceeded against KYGC and Hu Hua on the basis that the memoranda were binding, these claims are dismissed. There shall be no costs to the defendants who had absented themselves.

64. Finally, Hu Hua's claim against the bank is dismissed with costs for two counsel to be taxed.

Sgd:

Kan Ting Chiu
Judge

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