Henny Sutanto v Suriani Tani (alias Li Yu) and Another
[2005] SGHC 82

Case Number : Suit 275/2003

Decision Date : 26 April 2005

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Lee Mun Hooi and Wong Nan Shee (Lee Mun Hooi and Co) for the plaintiff; Quek Mong Hua and Julian Tay (Lee and Lee) for the second defendant

Parties : Henny Sutanto — Suriani Tani (alias Li Yu); Chandra Suwandi t/a Global Standard Marketing

Bills of Exchange and Other Negotiable Instruments – Legal proceedings – Action – Plaintiff lending money to first defendant – First defendant issuing cheques drawn on account of second defendant's sole proprietorship – Whether plaintiff allowed to claim against second defendant as drawer of cheques – Sections 23(1), 27, 29(1), 45(1), 46(3), 46(4) Bills of Exchange Act (Cap 23, 1999 Rev Ed)

Credit and Security – Money and moneylenders – Plaintiff lending money to first defendant – Plaintiff receiving cheques for greater sums of money than amount lent out – Whether plaintiff was moneylender under s 3 of Moneylenders Act – Whether plaintiff's claim on cheques unenforceable – Sections 3, 15 Moneylenders Act (Cap 188, 1985 Rev Ed)

26 April 2005

Lai Siu Chiu J:

The background

1 Henny Sutanto (the plaintiff) sued Suriani Tani (the first defendant) for friendly loans extended between 26 October 2001 and 25 June 2003 totalling $670,000 ("the loans"). The plaintiff's claim against Chandra Suwandi (the second defendant) in the same suit was as drawer of three cheques (hereinafter collectively referred to as "the three cheques") for sums totalling $515,000 drawn on the bank account of Global Standard Marketing ("Global"). The first defendant is the sister-in-law of the second defendant, being married to the latter's elder brother Henry Suwandi ("Henry"). The second defendant is the sole-proprietor of Global which is in the business of general wholesaling (including import and export) and trading in pagers, handphones and other telecommunications apparatus.

2 The plaintiff obtained judgment in default of appearance against the first defendant on 9 May 2003. The trial before me was only on the plaintiff's claim against the second defendant. At the conclusion of the trial, I dismissed the plaintiff's claim with costs and set aside as irregular the default judgment she had obtained against the first defendant. The plaintiff has appealed against my judgment in Civil Appeal No 15 of 2005.

The pleadings

3 As I have already touched on the plaintiff's claim in [1], I turn now to the second defendant's (amended) pleadings. He asserted a number of defences as follows:

(a) Apart from being a cheque signatory, the first defendant was at all material times not an employee, servant and/or agent of Global.

(b) The three cheques were issued by the first defendant without his knowledge, consent, mandate or authority and were for the first defendant's personal use and not for the business of Global.

(c) There was no consideration provided for the three cheques and the second defendant was consequently not liable thereon.

(d) The plaintiff was not a licensed moneylender under the provisions of the Moneylenders Act (Cap 188, 1985 Rev Ed) ("the Moneylenders Act"). She had lent the first defendant $500,000 in consideration of being repaid a large sum ($515,000) thereby raising the presumption of moneylending under s 3 of the Moneylenders Act. Accordingly, the plaintiff's claim on the three cheques was unenforceable under s 15 thereof.

(e) The plaintiff could not maintain her claim against him as there had been a subsequent compromise as well as accord and satisfaction, by reason of two agreements.

(f) The plaintiff failed to present the three cheques for payment on their due dates. Consequently, the second defendant was not liable.

4 In her Reply, the plaintiff contended[1] that the three cheques were negotiated by the first defendant as security for part-payment of the loans. The plaintiff added that she could not have known that the first defendant had issued the cheques without the authority of the second defendant.

The plaintiff's case

5 The plaintiff was the only witness for her case. She apparently comes from an influential family in Medan, Sumatra. She has lived in Singapore since 1991, looking after her four children who are schooling here. In her written testimony, she deposed that she was introduced to the first defendant in Jakarta in 1984, by the plaintiff's elder sister, Ivy; the first defendant was Ivy's best friend. The plaintiff was re-acquainted with the first defendant in 1991 in Singapore and they became friends. Their parents knew one another.

6 The plaintiff said she trusted the first defendant and whenever the latter was in financial difficulties and approached her for assistance, the plaintiff obliged. The amounts the plaintiff extended to the first defendant over a space of 20 months (October 2001 to June 2003) eventually ballooned to $670,000, as can be seen from the following breakdown:

	Date	Amount
1	26.10.2001	$200,000
2	31.10.2001	$150,000
3	26.11.2001	$150,000
4	13.03.2002	$120,000
5	26.04.2002	$ 30,000
6	25.06.2003	$ 20,000

	$670,000

7 Questioned on the purpose of the loans, the plaintiff testified the first defendant told her the loans were for business purposes. The plaintiff was unaware (until after her counsel had conducted a search in the Registry of Businesses) that Global was a sole-proprietorship of the second defendant. The plaintiff understood from the first defendant that the latter had to pay her suppliers until she could get her own funds. The second advance made by the plaintiff to the first defendant was supposedly for a tender. The plaintiff understood the first defendant to be involved in the telephones, cables and wiring business and that the latter supplied goods to the Indonesian oil conglomerate, Pertamina.

8 The plaintiff testified she understood from the first defendant that the first defendant, the first defendant's husband and the second defendant were business partners and that the first defendant had control of financial matters in Global. Questioned by the court why the cheques she issued to the first defendant were in favour of the first defendant and not Global, the plaintiff explained it was at the first defendant's request – it would be easier for the first defendant to pay her supplier.

9 The plaintiff denied the loans were to cover the first defendant's gambling losses incurred in casinos on Star Cruise ships. She further denied her husband operated a casino in Batam. She claimed her husband was a businessman based in Jakarta who had interests in timber, entertainment and in a hotel. She did not have any income of her own but depended on her husband although she owned two properties in Singapore paid for by her husband. Lately however, the plaintiff had started a small business selling shawls.

10 In purported repayment of the loans, the plaintiff deposed that the first defendant issued the three cheques drawn on Global's account with United Overseas Bank ("UOB"), Bukit Timah Branch, as follows:

Date	Cheque no	Amount
26.12.01	281249	$206,000
26.01.02	021297	$154,500
30.01.02	021300	$154,500
		$515,000

The first defendant had been made an authorised signatory by the second defendant, of Global's UOB account in July 1998. The first defendant instructed UOB to stop payment on the three cheques on 28 January 2002. According to the plaintiff, the first defendant told her not to present the three cheques for payment as otherwise they would be dishonoured. In the event, the plaintiff never presented any of the three cheques for payment.

11 In the course of the plaintiff's cross-examination, counsel for the second defendant drew her attention to various cash deposits credited to the plaintiff's DBS bank account. While she acknowledged receiving the various sums, the plaintiff claimed she had no way of knowing that they were payments by the first defendant. There were also remittances to her DBS account by way of telegraphic transfer ("TT") from Jakarta. Again, the plaintiff testified she would not know if the remitter was the first defendant.

12 Counsel for the second defendant asserted (but which the plaintiff denied) that the first defendant paid the plaintiff interest on the loans when she credited the plaintiff's account with monthly sums of $3,000 between November 2003 and February 2004. The plaintiff claimed the small sums were meant to placate her whenever she asked the first defendant for repayment of the loans, which duration was only supposed to be for two months each.

13 Counsel for the second defendant noted (see [6] above) that in exchange for the plaintiff's first loan of $200,000, the first defendant issued UOB cheque no 281249 (see [10]) for $206,000. For the plaintiff's second loan of $150,000, UOB cheque no 021297 given in exchange was for $154,500 whilst for the third loan of $150,000, UOB cheque no 021300 given in exchange was for $154,500. Asked to explain the difference of $15,000 between the three loans and amounts in the three cheques, the plaintiff prevaricated by claiming that the first defendant told her (the plaintiff) not to ask too many questions but to take the cheques.[2] The plaintiff denied the $15,000 represented interest payments (at 3%) and that she was a moneylender, let alone an unlicensed moneylender.

14 Prior to the trial, the second defendant had administered Interrogatories to the plaintiff (on 16 August 2004). The plaintiff filed her Answers on 17 September 2004 wherein she admitted receiving $16,900 from the first defendant via monthly TT remittances (between 13 November 2002 and 11 February 2004). Questioned how she knew those remittances came from the first defendant, the plaintiff explained she had the records and bank statements to evidence her receipt of the sums. Questioned why she did not deduct these remittances from the default judgment sum of $670,000 she had obtained against the first defendant, the plaintiff's unconvincing explanation was that it would have been confusing for her to go to her counsel to change the amount every time the first defendant paid her in dribs and drabs. She preferred to obtain judgment for the loans and deduct from the judgment sum whatever amounts the first defendant had paid her.

15 Questioned by the court why she continued to lend three more sums (totalling $170,000) to the first defendant even though the latter failed to repay her previous three advances totalling $500,000, the plaintiff explained it was to enable the first defendant to roll over the money in Global. Once the first defendant's supplier was paid, the first defendant had promised the plaintiff she would repay the plaintiff. The plaintiff denied the suggestion from opposing counsel that she was prompted to make further loans because she was collecting interest from the first defendant.

16 The plaintiff eventually admitted she had received total remittances of $80,100 from the first defendant[3] over and above the $16,900 admitted in her Answer to Interrogatory No 3. The sum of $16,900 was paid by five payments between 13 November 2002 and 11 February 2004. The total repayments by the first defendant on the loans were therefore $97,000.

17 From the documents produced in court, it was noteworthy that apart from a sum of $120,000 credited to the first defendant's DBS Bank ("DBS") account on 13 March 2002 and an earlier sum of $40,000 credited to the OCBC bank account of the first defendant's son, Kenward Suwandi, on 26 November 2001, there were no documents to evidence the balance of the loans by the plaintiff of $510,000 ($670,000 – $160,000). When this was drawn to her attention, the plaintiff explained it was because the first defendant requested cash cheques from her for the balance of $510,000.

18 It further emerged during the plaintiff's cross-examination, that Ivy and Ivy's husband, Jimson Gozali Wirawang, had entered into an agreement on 29 October 2003 ("the agreement with Ivy") wherein the couple agreed to pay the plaintiff $200,000 for moneys purportedly lent by the plaintiff, in monthly instalments of $10,000 each, by the issuance of fifteen postdated cheques in addition to an immediate payment of $50,000.

19 The plaintiff denied the agreement with Ivy was in settlement of the first defendant's debts. She further denied that Ivy had guaranteed the first defendant's debts. The plaintiff insisted[4] that the document had nothing to do with the case – the $200,000 from Ivy and Ivy's husband was not meant to reduce the first defendant's debts; it was a gift. The plaintiff explained that Ivy felt "bad" that the plaintiff had lent moneys to the first defendant. Ivy felt guilty in having introduced the first defendant to the plaintiff. Her sister wanted to compensate her. Consequently, Ivy sent the plaintiff $10,000 every month knowing the plaintiff needed money to meet her expenses.

20 Two other documents (again drafted by Indonesian lawyers) were produced in court. One was a power of attorney dated 1 October 2003 ("the power of attorney") from the plaintiff to three Indonesian lawyers, *viz* Sutan Siagian, Nikolas Hutabarat and Djumingan, authorising them to recover a debt of 3.5bn Indonesian rupiahs (equivalent to S$670,00 at 5,224 rupiahs to S$1.00). The plaintiff testified that she cancelled the power of attorney and retuned to Singapore to continue this suit against the defendants.

21 The second document was "an agreement on custody of money" dated 29 October 2003 ("the settlement agreement") and was between the plaintiff and the second defendant. The terms stated, *inter alia*, that the plaintiff had placed in custody with the first defendant the sum of S$360,000 and that the first defendant had agreed to refund the said sum by paying monthly instalments of S$3,000 into the plaintiff's DBS account. The settlement agreement was signed by the first defendant but not by the plaintiff. She explained she did not sign because the first defendant owed her $670,000, not $360,000, and the agreement described the first defendant as having custody of $360,000 when it was actually a loan.

22 It is noteworthy that the settlement agreement as well as the agreement with Ivy bore the same date (29 October 2003). Both documents appeared to have been drafted by the plaintiff's lawyers.

The second defendant's case

23 When he testified, the second defendant[5] explained that he set up Global for the purpose of taking over from a Singapore trading company the role of importing and supplying goods to his business in Jakarta, which was a partnership he had with Henry, established since the 1970s. As Global was a small set-up, he did not employ any staff and would order goods personally. Collection and delivery would then be done by his appointed forwarders. However, he travelled extensively (twice or thrice a month), usually to Indonesia but sometimes to the US. The second defendant therefore requested his wife (Martha Lukman) as well as the first defendant to be cheque signatories for Global's UOB bank account to facilitate payment of goods from suppliers, as both of them were in Singapore most of the time. Hence, he entrusted Global's cheque books to his wife and the first defendant.

24 However, in or about January 2001, the second defendant's wife left for Australia when the couple's two older children went to Melbourne to study. His wife only returned to Singapore with their two other children in June 2003. He therefore became even more dependent on the first defendant to make payment to suppliers on his behalf. The second defendant made Henry a cheque signatory at about that time so that Henry could sign cheques in the absence of the first defendant. As far as he could recall, the first defendant had never issued cheques from Global's account for her own personal use; all cheques issued by her were for business purposes until this case.

25 In or about September to October 2002, the second defendant was told by Henry that the first defendant had indulged in heavy gambling and that Henry had asked her to return to Jakarta in

an effort to stop her gambling. That was the first time the second defendant learnt of the first defendant's gambling problems. Her return to Jakarta meant that the first defendant could no longer sign cheques for Global. Consequently, the second defendant revoked her mandate with UOB on 30 October 2002.

26 The second defendant deposed he was shocked to receive a letter of demand dated 7 March 2003 ("the letter of demand") from the plaintiff's solicitors alleging he had issued the three cheques in part payment of the loans advanced by the plaintiff to the first defendant. He deposed he did not know the plaintiff, had no dealings with her and had never issued any cheques to her.

27 The second defendant immediately showed the letter of demand to Henry and asked that he clarify the matter with the first defendant. Henry then told the second defendant of an incident in January/February 2003 where the plaintiff had stormed into Henry's Jakarta office demanding repayment of loans she had given to the first defendant. The plaintiff had then shown to Henry copies of cheques purportedly issued by the first defendant; these included the three cheques.

28 Although the second defendant was upset with his brother in not informing him earlier of the incident just described, the second defendant was also mindful of Henry's feelings and the breakdown in Henry's relationship with the first defendant. The second defendant told Henry to get the first defendant to sort out the mess. For the sake of Henry who had suffered tremendously, the second defendant did not lodge a police report on what the first defendant had done.

29 In January 2004, the second defendant obtained from Henry the mobile telephone number of the first defendant and managed to contact and meet up with her in Jakarta. The first defendant then admitted to the second defendant that she had gambled on cruise ships and had lost heavily. Ivy had introduced her to the plaintiff, who was described by the first defendant as a "loan shark". The second defendant deposed that the first defendant apologised for all the inconvenience she had caused him by her issuance of the three cheques.

30 When the second defendant told the first defendant that the plaintiff had sued him (in April 2003), the first defendant was furious. As the plaintiff had reneged on their agreement, according to the first defendant, the latter decided not to make any more payments (of $3,000 per month) to the plaintiff. The first defendant assured the second defendant that she had already reached a settlement with the plaintiff and would let him have copies of the documents (which she did a few days after their meeting). That was how the second defendant came to be in possession of the settlement agreement.

31 In July 2004, the first defendant contacted the second defendant and handed him a copy of the agreement with Ivy. She also handed him copies of her remittance advices evidencing payments she had made to the plaintiff's DBS account. Thereafter, it was very difficult for him to contact the first defendant as she had apparently switched off her mobile telephone. The second defendant accused the plaintiff of being less than forthcoming as she did not disclose the first defendant's payments (save for $16,900) in her Answers to Interrogatories.

32 In his oral testimony, the second defendant revealed he became a permanent resident of Singapore in 1984 and had been living in Singapore since. He first came to Singapore in 1972 to study and left for the UK in 1974 to do, first, his 'A' levels and then his university degree. He returned to Indonesia after completing his studies in 1979. He married in September 1980 before returning to Singapore in 1984. The second defendant testified he started Global because he wanted to teach his children how to do business. He himself had started doing business while he was a student, both in Singapore and in England. His other reason for setting up Global was to save on the commission he

used to have to pay to the Singapore trading company (see [23] above) for supplying goods to the partnership he had with Henry in Jakarta.

33 The second defendant was cross-examined in considerable detail on his *modus operandi* for Global. He repeated his earlier testimony set out in [23] above and confirmed that he had made it clear to the first defendant she could only issue cheques in respect of business dealings for Global. The UOB account was also used to meet business expenses (such as telephone charges, entertainment and petrol) of Global but not the personal expenses of his wife. Sometimes he would check the bank statements of Global but not the cheque books. The bank statements were sent to his Dunearn Road residence (which was not the residence of the first defendant as stated on the Writ of Summons).

34 The first defendant, whose evidence would have been crucial, did not testify. Questioned on her absence, the second defendant explained[6] that he had asked her to be a witness but she was afraid to come to Singapore and was too ashamed to face him or her family. He had then asked her to affirm an affidavit. She had also refused if that meant having to come to Singapore. The first defendant told him she believed she had settled the matter with the plaintiff.

35 According to Henry,[7] the first defendant came to live in Singapore in 1997 to take care of their two children who were studying here. She was not a permanent resident but held a dependent's pass. The first defendant left Singapore in July 2002 after their children had completed their studies here and went abroad to continue their education.

36 Henry testified he first learnt of his wife's heavy gambling through a relative in July 2002. However, she denied gambling when he questioned her and claimed she only made small bets in cruise ship casinos accompanied by one Ivy Sutanto. Henry sensed the first defendant was not telling the truth and asked her to return to Indonesia (which she did). His suspicions of her were reinforced when he tailed her to casinos in Jakarta in September 2002 on two occasions and found she had been gambling behind his back. It was only after the plaintiff visited his office in January/February 2003 when Henry confronted her with copies of her cheques handed to him by the plaintiff, that the first defendant revealed to him the extent of her gambling losses. Henry did not immediately inform the second defendant about the three cheques because the first defendant had told him she wanted to settle the matter with the plaintiff.

37 He and the first defendant had a quarrel after which she left their Jakarta home. Henry testified he had had no contact with the first defendant since February/March 2003. He did not know her whereabouts (although the second defendant believed she was somewhere in Indonesia). For the sake of their children, Henry contemplated but decided against divorcing the first defendant.

38 Until he was shown the deposit slips, Henry was unaware that $120,000 had been credited to the joint DBS account he maintained with the first defendant on one occasion and that on another occasion, $40,000 was credited to the OCBC account of his son (see [17] above). He never checked the bank statements from DBS which account was managed by the first defendant and which statements were sent to his Thomson Road residence. The DBS account was opened for the purpose of his children's studies. It was only before the trial that Henry saw the settlement agreement and the agreement with Ivy for the first time; he was not aware of their existence nor did he participate in the alleged settlement the first defendant had with the plaintiff.

The findings

39 I preferred the testimony of the second defendant and his brother Henry as being more

credible and consistent with the documents before the court, to that of the plaintiff. Her failure to disclose the first defendant's part-payments totalling $80,100 until confronted with the documentary evidence reinforced my belief that the plaintiff was not a truthful witness. I dismissed the plaintiff's action as the second defendant had succeeded on the various defences he had raised against her claim. I will now address each of those defences in turn.

Moneylending

40 I start by referring to s 3 of the Moneylenders Act which states:

> Save as excepted in paragraphs (*a*) to (*e*) of the definition of "moneylender" in section 2, any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary is proved to be a moneylender.

41 I had pointed out to Mr Lee, counsel for the plaintiff,[8] that the above presumption would apply to his client as she had lent sums on at least four occasions (see [13] above) in consideration of a greater sum being repaid, which presumption the plaintiff had failed to rebut. She did not provide any, let alone a satisfactory, explanation, for the greater sums evidenced in the three cheques upon which she sued the second defendant. Moreover, Henry's written testimony[9] that the plaintiff had told him (when she visited his office in January/February 2003) that she was prepared to take back only the principal sum without interest was neither challenged during his cross-examination nor was it denied by the plaintiff when she testified.

42 In his closing submissions, counsel for the plaintiff argued that even if interest was charged by the plaintiff on the loans, *Subramaniam Dhanapakiam v Ghaanthimathi* [1991] SLR 432 was authority for the proposition that payment of interest by a borrower on friendly loans extended by a friend did not constitute moneylending. Counsel relied on the following extract (at 434, [10]) from the judgment of Chan Sek Keong J:

> The settled law is that what is prohibited by the Act was not moneylending but the business of moneylending. This is a question of fact. It is also settled law that the giving of a number of loans to friends does not constitute the business of moneylending, unless there is a system and continuity about the transactions. In *Litchfield v Dreyfus* [[1906] 1 KB 584] Farwell J said (at p 590):
>
> > … it would be a straining of the language of the Act to hold that a man who so obliges friends is carrying on the business of a moneylender. The Act was intended to apply only to persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of another business or to a few old friends by way of friendship. The particular Act was supposed to be required to save the foolish from the extortion of a certain class of the community who are called moneylenders as an offensive term. Moneylending is a perfectly respectable form of business. Nobody says that bankers are rascals because they lend money.

43 Mr Lee appeared to have overlooked the findings of Chan J in his submissions. The loans were friendly loans between two long-time friends, interest was not demanded but accepted when offered, the interest was not exorbitant and varied in accordance with the generosity of the defendant. In our case, the interest rate charged by the plaintiff was a consistent 3% for the first four loans totalling $620,000, showing a system and continuity; each loan is a separate transaction. For the first three loans, interest was included in the three cheques. For the fourth loan ($120,000), the first defendant credited $3,600 to the plaintiff's DBS account on 23 April 2002.[10] There was no evidence that

payment of such interest was "volunteered" by the first defendant.

The Bills of Exchange Act

44 Mr Lee had relied, *inter alia*, on ss 29, 30, 38, 46, 50 and 55 of the Bills of Exchange Act (Cap 23, 1999 Rev Ed) ("the BEA") for his submissions that the second defendant was liable for the three cheques issued by Global. Counsel for the second defendant (Mr Quek) on the other hand relied, *inter alia*, on ss 23, 27, 29, 31, 45 and 46 of the BEA for the opposite submission.

45 Section 30(1) of the BEA states that every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value whilst s 30(2) states that every holder of a bill is *prima facie* deemed to be a holder in due course. Mr Lee read s 30 with s 38(1)(*a*) which states that the plaintiff as the holder of the bill (the three cheques) may sue on the bill in her own name. He then relied on ss 29(1)(*a*) and 29(1)(*b*) of the BEA to argue that the plaintiff was a holder in due course who had taken the bill without notice that it had been dishonoured and had taken it in good faith and for value, and that at the time the bill was negotiated to her, she had no notice of any defect in the title of the person (the first defendant) negotiating it. He added that the second defendant was liable on the cheques as drawer under s 55 of the BEA.

46 It was common ground that the plaintiff failed to present the cheques for payment. Mr Lee relied on s 46(3)(*e*) of the BEA to say that there had been waiver by reason of the fact that the first defendant had expressly told the plaintiff not to present the cheques for payment. He then relied on s 50(3)(*c*)(v) to say that notice of dishonour was dispensed with where the drawer had countermanded payment.

47 Mr Quek countered Mr Lee's submissions by referring to s 23(1) of the BEA. He pointed out that his client could not be liable as drawer as the second defendant did not sign the three cheques. Although the three cheques were signed by his authorised mandate, they were not drawn for authorised purposes, *viz* for the business of Global (see *Reckitt v Barnett, Pembroke and Slater, Limited* [1929] AC 176). Further, as the payee, the plaintiff could not be a holder in due course of the cheques. Granted the definition of a "holder" under s 2 of the BEA covers a payee or indorsee of a bill or note who is in possession of it or the bearer thereof, however, the House of Lords in *R E Jones, Limited v Waring and Gillow, Limited* [1926] AC 670 had held that the original payee of a cheque was not a "holder in due course". The plaintiff could not therefore come within the definition of a holder in due course under s 29(1) of the BEA. As the words "or bearer" had been crossed out on the three cheques, the plaintiff could not be the bearer of the cheques.

48 Mr Quek argued that there was no negotiation of the cheques in any case under s 31(1) of the BEA since the plaintiff was not a holder in due course. The cheques were not transferred to her so as to constitute her (as transferee) the holder of the cheques.

49 Mr Quek pointed out that the plaintiff did not provide any valuable consideration for the cheques under ss 27(1)(*a*) or 27(1)(*b*) so as to render the second defendant liable (see also *Halsbury's Laws of England* vol 4(1) (Butterworths, 4th Ed Reissue, 1992) at para 380). It was a misconceived argument for opposing counsel to say (to which I agreed) that the plaintiff provided consideration by accepting the three cheques in exchange for extending loans to the first defendant. It was undisputed that the second defendant and/or Global had no business or any dealings with the plaintiff whatsoever.

50 Counsel added that forbearance by the plaintiff to sue the first defendant did not constitute valuable consideration to the second defendant. Under s 27(2), the antecedent debt or liability which

constitutes valuable consideration must be that of the drawer or promisor, not a total stranger. If the liability is that of a stranger (the first defendant), there must be some relation between the receipt of the instrument and the antecedent debt or liability, such as the recipient's promise to forbear in regard to the stranger's debt (see *Halsbury's Laws of Singapore* vol 12 (LexisNexis, 2002) at para 140.412). Mr Quek pointed out that the plaintiff's consideration did not move to the second defendant as the promise to forbear was to the first defendant. In any case, the promise was not made at the behest of the second defendant. There was also no evidence to suggest that the plaintiff had acted to her detriment. On the contrary, the evidence showed she had sued the first defendant and obtained default judgment against the latter.

51 Mr Quek submitted that the cheques must be presented. He referred to s 45 of the BEA which states:

> (1) Subject to the provisions of this Act, a bill must be duly presented for payment.
>
> (2) If it be not so presented, the drawer and indorsers shall be discharged.

The second defendant should be discharged from liability as the plaintiff did not present the cheques for payment. Contrary to her counsel's submission, the plaintiff was not excused from presenting the cheques for payment merely because the first defendant had told her the cheques would be dishonoured. Section 46(4) of the BEA states:

> The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

52 Mr Quek also placed reliance on s 55(1) of the BEA which states:

> The drawer of a bill, by drawing it —
>
> > (*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; …

Section 46(3)(*e*) of the BEA could not apply as there was no waiver of presentment under the circumstances.

Compromise and/or accord and satisfaction

53 Mr Quek also submitted that the settlement agreement and the agreement with Ivy were in the nature of a compromise and/or accord and satisfaction so as to preclude the plaintiff from suing the second defendant. He relied on *Info-communications Development Authority of Singapore v Singapore Telecommunications Ltd (No 2)* [2002] 3 SLR 488. I did not give these defences serious consideration as the principal parties to the two agreements, *viz* the first defendant, Ivy and Ivy's husband, did not testify. Consequently, the oral testimony presented was hearsay and the documentary evidence produced in court had no probative value.

The decision

54 I was of the view that as the plaintiff had failed to disprove the presumption that she was a moneylender (without a licence) under s 3 of the Moneylenders Act, her claim against the first

defendant was unenforceable under s 15 of the same Act. Even if I am wrong and the plaintiff could not be said to be a moneylender, the evidence clearly showed the default judgment she had obtained against the first defendant was irregular; the judgment sum of $670,000 was inaccurate as she had failed to give credit either for the sum of $16,900 she had admitted receiving (in her Answer No 3 to the second defendant's Interrogatories) or for the sum of $80,100 proved in court (and admitted) to have been credited to her DBS account by the first defendant.

55 As for the plaintiff's claim against the second defendant, I accepted the submissions of his counsel that the second defendant could not be liable for the amount of $515,000 on the three cheques.

Conclusion

56 In summary (contrary to the submissions made on the plaintiff's behalf), the second defendant was not a drawer as he did not sign any of the three cheques (see s 23(1) of the BEA). The plaintiff was the payee, not the holder in due course, of the three cheques, there being no negotiation of any of the three cheques (s 29(1) of the BEA) to the plaintiff. No consideration was provided by the plaintiff to the second defendant for any of the three cheques (s 27 of the BEA). The three cheques were not presented for payment under s 45(1) of the BEA and the plaintiff could not bring herself within any of the exceptions to presentment under s 46(3) thereof. Indeed, s 46(4) of the BEA required the plaintiff to present the three cheques for payment, even if she knew they would be dishonoured when presented.

57 As the plaintiff had failed to comply with various conditions of the BEA which had to be fulfilled before the second defendant could be found to be liable on the three cheques, I dismissed her claim against him with costs.

---

[1]In para 4.

[2]See N/E 17.

[3]As shown in 2AB145-155.

[4]At N/E 9-10.

[5]DW1.

[6]N/E 63.

[7]DW2.

[8]N/E 87.

[9]Para 11 of his affidavit evidence-in-chief.

[10]See 2AB150.