IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 63

Civil Appeal No 88 of 2019

Between

(1) SVM International Trading Pte Ltd
(2) Feasto Pte Ltd
(3) Mizimegah Pte Ltd
(4) Scarlett Merida Xi Wei Yuan

… *Appellants*

And

Liew Kum Chong

… *Respondent*

In the matter of Suit No 980 of 2016

Liew Kum Chong

… *Plaintiff*

And

(1) SVM International Trading Pte Ltd
(2) Feasto Pte Ltd
(3) Mizimegah Pte Ltd
(4) Scarlett Merida Xi Wei Yuan
(5) Pan Jiaying

… *Defendants*

EX TEMPORE JUDGMENT

[Contract] — [Sham transaction]
[Credit and Security] — [Money and moneylenders] — [Illegal moneylending]

SVM International Trading Pte Ltd and others
v
Liew Kum Chong

[2020] SGCA 63

Court of Appeal — Civil Appeal No 88 of 2019
Tay Yong Kwang JA, Belinda Ang Saw Ean J and Quentin Loh J
1 July 2020

1 July 2020

Tay Yong Kwang JA (delivering the judgment of the court *ex tempore*):

1 In the proceedings in the High Court, the respondent sought repayment of the balance outstanding on three loans, with one loan given to each of the three appellant companies. The loan amounts were $400,000, $200,000 and $200,000 respectively. Half of each of the three loan amounts had been repaid, leaving a total of $400,000 still outstanding. The respondent also sued the fourth appellant and Ms Pan Jiaying ("Pan") jointly and severally as guarantors for the said loans. As Pan, a Chinese national, was suspected to have been detained in China, the respondent did not attempt to effect service of the writ of summons on her and the action against her was later deemed to have been discontinued in March 2018, 12 months after the validity of the writ of summons had expired.

2 The appellants raised the following defences before the High Court:

(a) the loans to the three companies were sham transactions and the true borrower was Pan;

(b) the guarantee should be set aside on the ground of unconscionability;

(c) the guarantee should be set aside on the ground of *non est factum*; and

(d) the loans and the guarantee were not enforceable because of the Moneylenders Act (Cap 188, 2010 Rev Ed).

3 The High Court found against the appellants on all the above grounds and gave judgment for $200,000, $100,000 and $100,000 respectively against the three appellant companies. The High Court also gave judgment against the fourth appellant for $400,000 on the guarantee and directed that there should not be double recovery of the total outstanding amount. The High Court awarded costs against the three appellant companies collectively at $90,000 and costs against the fourth appellant on an indemnity basis pursuant to the guarantee at $120,000, with the same direction against double recovery.

4 This appeal is against the High Court's findings on the defences set out in paragraphs 22(a) and 2(d) above, namely, that the loans made by the respondent to the three appellant companies were not sham transactions and did not infringe the Moneylenders Act.

5 We do not see why the loans should be regarded as sham transactions simply because they were made to the three appellant companies although the funds were ultimately to be used by Pan. Pan and the fourth appellant were the only shareholders in the first appellant. The fourth appellant owned 100% of the

second appellant and 70% of the third appellant. She was the sole director in all three appellant companies. Pan and the fourth appellant were business associates and according to Lee Show Sian ("Lee"), a witness for the respondent, were "close like sisters". They were even living together in a condominium apartment in Singapore at one time. They were also joint and several guarantors for the three loans. It was the prerogative of the appellants to decide how the funds from the loans would be deployed and if they decided that all the funds would be handed over to Pan for her use, that alone could not raise any issue about the legitimacy of the loans.

6 Moreover, the High Court accepted that there was a legitimate reason for the loans to be made to the three appellant companies. The respondent wanted security for the loans and each of the three appellant companies at that time had one sale agreement for uncompleted properties. They could therefore offer security in the form of options to purchase the uncompleted properties at discounted prices.

7 On the Moneylenders Act issue, the High Court decided that there was no need to make any finding on whether interest was charged by the respondent since the evidence showed that the respondent lent only to companies and was therefore an excluded moneylender within the meaning of the Act. There was no evidence of any other loans made by the respondent to individuals.

8 The respondent and his witnesses have explained how the loan came about, that Pan was the one who initiated the request for a short term loan for her business and that fortuitously, the respondent had just sold his house at Mount Sinai and therefore had available funds. Pan was a good friend of Lee and Lee was a good friend of Tang King Kai ("Tang") (the lawyer who prepared the documentation for the loans and another witness for the respondent). In turn,

Tang was a good friend of the respondent. There were therefore personal relationships and goodwill involved in the respondent agreeing to lend the money to Pan through the three appellant companies for two to three months with sufficient security.

9 The High Court did not think that the respondent made the loan gratuitously and that his motivation was that he wanted to "pay back to society". The onerous terms of the options to purchase (in respect of the uncompleted properties) given by the three appellant companies to the respondent testified to this. Nevertheless, as the High Court explained, there was no evidence of some underlying pattern of the respondent giving out loans to individuals and therefore no reason to suspect that he was actually an unlicensed moneylender.

10 Accordingly, we affirm the High Court's findings. For completeness, we mention briefly our views on the issue of unconscionability (which is no longer in contention on appeal). We do not see any reason why the fourth appellant should have thought that Tang was the lawyer acting for her and the three companies. What were the terms of his engagement if so? She is well educated and had some business experience, although she was only about 31 years old in 2013. Tang also affirmed that at the 26 September 2013 meeting in his law office during which the loan documentation was completed, he explained to all present that the respondent was his client and he was representing the respondent to finalise the details and documentation of the loan. This evidence was backed up by Lee who was also at that meeting. Pan and the fourth appellant were offered the opportunity by Tang to bring the loan documents home to study first and to get independent legal advice if they wished. They decided that there was no need to do that. There could not therefore be any issue of unconscionability in the loan documentation.

11 The *non est factum* defence (which is also no longer in contention on appeal) may also be dealt with briefly on the same grounds as above. Both Tang and Lee said that the loan documents were explained by Tang in English and there is no doubt that the fourth appellant was literate and understood English. She did not see the need to bring the loan documents back to study or to seek advice. Instead, she and Pan decided to execute them immediately at Tang's office.

12 For the above reasons, we dismiss the appeals. On the question of costs, the appellants' costs schedule estimated costs at $60,000 and disbursements at $6,000. The respondent's costs schedule estimated costs at $30,000 and disbursements at $4,975.27. We were told by counsel for the respondent that the estimated costs are not on an indemnity basis although the High Court ordered indemnity costs against the fourth appellant on the basis of the guarantee but directed that there should not be double recovery of costs by the respondent against the three appellant companies. In the circumstances, we order costs of this appeal fixed at $35,000 (inclusive of disbursements) to be paid by all the appellants to the respondent. The usual consequential orders relating to the security for costs are to apply.

Tay Yong Kwang	Belinda Ang Saw Ean	Quentin Loh
Judge of Appeal	Judge	Judge

Ling Daw Hoang Philip and Chua Cheng Yew (Wong Tan & Molly Lim LLC) for the appellants;
Tang Shangwei, Gavin Neo and Jolyn Khoo (WongPartnership LLP) for the respondent.
