

Henny Sutanto v Chandra Suwandi (trading as Global Standard Marketing)
[2005] SGCA 45

Case Number : CA 15/2005, Suit 275/2003
Decision Date : 21 September 2005
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Lee Mun Hooi and Wong Nan Shee (Lee Mun Hooi and Co) for the appellant;
Quek Mong Hua and Julian Tay (Lee and Lee) for the respondent
Parties : Henny Sutanto — Chandra Suwandi (trading as Global Standard Marketing)

Bills of Exchange and Other Negotiable Instruments – Presentation for payment – Whether payee required to present cheques for payment – Whether exceptions to requirement for presentation for payment established – Sections 45, 46(3) and 46(4) Bills of Exchange Act (Cap 23, 1999 Rev Ed)

21 September 2005

Tan Lee Meng J (delivering the judgment of the court):

1 The appellant, Mdm Henny Sutanto (“Mdm Henny”), sued the respondent, Mr Chandra Suwandi (“Chandra”), with respect to three cheques signed by the latter’s sister-in-law, Mdm Suriani Tani (“Mdm Tani”), and drawn on the account of the latter’s business, Global Standard Marketing (“Global”). Her claim was dismissed by the trial judge. We dismissed her appeal and now set out the reasons for our decision.

Background

2 Chandra is the sole proprietor of Global, which trades in pagers, handphones and other telecommunications equipment. As Global is a small enterprise, Chandra did not employ any staff. He personally ordered goods that he required and arranged for the same to be collected or delivered by freight forwarders. Chandra travelled extensively. As such, in July 1998, he authorised Mdm Tani, who was in Singapore most of the time, to operate Global’s account with the Bukit Timah branch of the United Overseas Bank (“UOB”) to facilitate the early settlement of bills for goods ordered from suppliers.

3 In due course, Chandra had cause to regret having authorised Mdm Tani to sign cheques on Global’s behalf. Mdm Tani borrowed \$670,000.00 from Mdm Henny between October 2001 and June 2003. To repay the loans, Mdm Tani issued to Mdm Henny three cheques drawn on Global’s UOB account. On 26 December 2001, she issued a cheque for \$206,000.00. On 26 January 2002, she issued another cheque for \$154,500.00 and on 30 January 2002, she issued yet another cheque for \$154,500.00.

4 After issuing the three cheques to Mdm Henny, Mdm Tani instructed UOB to stop payment on the cheques. Mdm Henny did not present the three cheques for payment. She claimed that she was told by Mdm Tani that the cheques would be dishonoured if they were presented.

5 In 2003, Mdm Henny instituted legal proceedings against Mdm Tani and Chandra. Her claim against Mdm Tani was for the repayment of the loans that she had extended to the latter. Her claim against Chandra was with respect to the three Global cheques signed by Mdm Tani.

6 On 9 May 2003, Mdm Henny obtained judgment in default of appearance against Mdm Tani.

The default judgment was set aside on the ground of irregularity by the trial judge, whose judgment was primarily concerned with Mdm Henny's claim against Chandra.

The trial judge's decision

7 The trial judge dismissed Mdm Henny's claim against Chandra on a number of grounds. One of the grounds was that Mdm Henny did not comply with s 45 of the Bills of Exchange Act (Cap 23, 1999 Rev Ed), which required her to present the cheques for payment. Mdm Henny lodged an appeal against the trial judge's decision.

The appeal

8 In our view, the appeal against the dismissal of Mdm Henny's claim against Chandra could not succeed for the simple reason that her failure to present the three cheques to UOB for payment was fatal to her case.

9 Section 45 of the Bills of Exchange Act provides as follows:

- (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*.

[emphasis added]

10 Numerous cases illustrate the requirement that cheques must be presented for payment (see, for instance, *Yeoman Credit Ltd v Gregory* [1963] 1 WLR 343). It ought to be noted that s 46(4) of the Bills of Exchange Act provides that "[t]he fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment". *Chalmers & Guest on Bills of Exchange, Cheques and Promissory Notes* (Sweet and Maxwell, 15th Ed, 1998) explains the position in para 1172 as follows:

English law has never, in general, favoured the view that presentment is dispensed with because it would in the circumstances be futile, *i.e.* because it is known that the bill will not in fact be paid. Thus, at common law, it was held that due presentment was not dispensed with in cases where, to the knowledge of the holder, the drawer ordered the acceptor not to pay the bill or the acceptor became bankrupt or absconded before the due date, or where the acceptor stated that he could not or would not pay the bill at maturity. [The Act] preserves this rule by providing that 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.

11 Admittedly, there are exceptions to this general rule. The circumstances under which presentment of a cheque is excused are specified in s 46(3) of the Bills of Exchange Act. They are as follows:

- (a) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;
- (b) where the drawee is a fictitious person;
- (c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(d) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented; and

(e) by waiver of presentment, express or implied.

12 Mdm Henny contended that she was entitled to rely on s 46(3)(e) of the said Act but the trial judge found that there was no proof that the presentment of the three cheques had been waived. As we had no reason to disagree with the trial judge's finding, Mdm Henny's claim against Chandra had no leg to stand on and it was unnecessary for us to consider whether her other grounds of appeal had any merit. We thus dismissed Mdm Henny's appeal with costs.

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