

Commerzbank Aktiengesellschaft, Singapore Branch v Lim Kee Ban Heng Pte Ltd and Others [2001] SGHC 45

Case Number : Suit 1088/2000/Q, RA 39/2001
Decision Date : 09 March 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Oommen Mathew [Tan Peng Chin & Patners] for the plaintiffs/respondents; Teo Siew Kuey [Chang Teo & Partners] for the defendants/appellants
Parties : Commerzbank Aktiengesellschaft, Singapore Branch — Lim Kee Ban Heng Pte Ltd; Lim Mong Hock; Lim Boon Siew; Lim Boon Pin; Lim Siew Eng

JUDGMENT:

Grounds of Decision

1. This was an appeal by the defendants against an order for summary judgment. The first defendant negotiated a restructuring of their debt to the plaintiff bank and that resulted in the creation of the facility letter dated 12 June 2000. This letter sets out the loan amount as \$760,000 with the maturity date fixed at 31 August 2000. The original facility granted on 25 July 1995 by the bank as a trade financing facility. That facility was terminated by the bank in June 2000 due to the first defendants inability to meet payments.
2. The second to fifth defendants were all guarantors under the facility letter. The first defendant failed to pay on due date and the plaintiffs solicitors served a letter of demand dated 6 October 2000.
3. The assistant registrar granted judgment to the plaintiff on the undisputed facts above. On appeal by the defendants it was argued that there was an oral agreement between the plaintiff and first defendants respective representatives that the date of maturity should be 31 August 2001 and not 31 August 2000.
4. The only triable issue, therefore, was whether this assertion was a reasonable one. It is not the law that a case must go to trial merely because of a denial or assertion of a contrary fact by the defendant. The court must avoid a trial by affidavit, but it must not pass over its duty to scrutinize the depositions of the parties. Mr. Mathew on behalf of the plaintiff drew my attention to paragraphs 4 and 5 of the affidavit of the fifth defendant (Lim Siew Eng) in which she deposed that the guarantors were told by the plaintiffs representative that the date of the facility letter would be "renewed and re-dated as 21 June 2001 and the date of the maturity would be 31 August 2001".
5. I agree with Mr. Mathew that there were no reasonable grounds why the plaintiff would agree to renew a letter one year later and re-date it 21 June 2001. If the intention was that on 31 August 2000 the plaintiff would grant an extension of one year, that was not evident from the fifth defendants affidavit. Furthermore, it would have to be part of the written terms. On the other hand, if, as the fifth defendant stated, the defendants discovered a typographical error in the date of maturity, then they must produce an explanation why the letter itself needed to be re-dated but there was none. Furthermore, there was no cogent reason why the defendants had not asked for an immediate rectification if they had discovered the error prior to execution.
6. The contract document has no ambiguity and there is no basis for the parties to adduce oral evidence to challenge what had been clearly stated. If the error was discovered after the event one may arguably say that the defendants could make an application to rectify the error, but in this case, that option is closed to them because the error was detected before the agreement was signed.
7. In the circumstances, there was, in my view, no reasonable issue for trial. The appeal was, therefore, dismissed.

Choo Han Teck

Judicial Commissioner

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