Neville, Guy
v
Andrla, Dominic

[2017] SGHC 295

High Court — Suit No 186 of 2017 (Registrar's Appeal No 233 of 2017)
Belinda Ang Saw Ean J
18 September 2017

Civil Procedure — Summary Judgment

Credit and Security — Money and moneylenders — Interest

14 November 2017

Belinda Ang Saw Ean J:

1 The plaintiff, Guy Neville, sued the defendant, Dominic Andrla, for sums owing under a loan agreement and a personal guarantee provided by the defendant under an investment agreement and applied for summary judgment. The Assistant Registrar granted summary judgment in favour of the plaintiff; the defendant was adjudged liable to pay the sums of GBP 409,414.70 with contractual interest under the loan agreement(s) and USD 390,000 under the personal guarantee in the investment agreement. The Assistant Registrar also granted the defendant unconditional leave to defend one issue regarding the rate of interest due for the sums owing under the investment agreement.

2 The defendant filed Registrar's Appeal No 233 of 2017 ("RA 233") by way of an appeal against the Assistant Registrar's decision. I heard the parties on 18 September 2017 and dismissed the appeal.

3 Before me, counsel for the defendant, Mr Adrian Wee ("Mr Wee"), stated that the defendant was no longer challenging the plaintiff's claims under the investment agreement and personal guarantee. Consequently, the hearing of RA 233 proceeded on the claims under the loan agreement(s). I now give the reasons for my decision.

4 For summary judgment, the plaintiff must first establish a *prima facie* case for judgment. Upon doing so, the defendant has the onus of showing why judgment should not be entered. Mr Wee argued for leave to defend two triable issues constituting *bona fide* defences, namely:

(a) Whether the 30 April 2015 loan agreement ("2015 loan agreement") was varied in January 2017 by an exchange of emails between the plaintiff and defendant ("the 2017 loan agreement").[1]

(b) Whether the plaintiff was a moneylender under the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA"). If so, the loan agreement would be unenforceable under s 14(2) MLA as the plaintiff was unlicensed.

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[1] Notes of Arguments dated 18 September 2017 at p 2.

The *prima facie* case

5 I started with the question of whether the plaintiff had made out a *prima facie* case for judgment. The plaintiff's claim of GBP 409,414.70 was based on a loan agreement made on or around 30 April 2015 ("2015 loan agreement"), which he claimed was varied by the 2017 loan agreement.

6 The 2015 loan agreement provided for a loan from the plaintiff to the defendant for a sum of GBP 353,978 to be repaid by 30 November 2015, together with interest of GBP 24,905. As of 2017, the defendant had only repaid GBP 20,000 in March 2016. The 2017 loan agreement was evidenced by emails exchanged between the plaintiff and defendant in January 2017 agreeing on a new repayment schedule where the defendant would return the sums owing under the 2015 loan agreement in instalments over the course of the year. Thus, unlike the 2015 loan agreement, the 2017 loan agreement was not an actual standard form loan agreement, although I have adopted the parties' terminology and referred to it as such. By these emails, the defendant proposed to pay GBP 10,000 with balance interest on 13 January 2017, GBP 35,000 by 31 January 2017, GBP 53,000 by 31 March 2017, GBP 150,000 by 30 June 2017, GBP 150,000 and remaining balance interest by 31 December 2017. The plaintiff accepted this a day later, attaching his calculation of the balance interest due under the repayment schedule.

7 However, other than paying the plaintiff the sum of GBP 2,000 on 8 February 2017, the defendant made no other payments. The plaintiff sued the defendant on 21 February 2017 and applied for summary judgment on 24 May 2017. It was pointed out in the plaintiff's supporting affidavit that the defendant

had never in his correspondence with the plaintiff disputed his liabilities towards the plaintiff.

8 The defendant did not complain about the plaintiff's computation of GBP 409,414.70 and Mr Wee did not query the plaintiff's computation of the claim figure of GBP 409,414.70. Instead, the defendant's contention was that as at the date of the Defence (*ie*, 4 April 2017), the sum due and owing to the plaintiff under the 2017 loan agreement was limited to the first three instalments totalling GBP 98,000, less the GBP 2,000 already paid on or before 8 February 2017. It is not clear why the defendant made use of the date of the Defence to determine the date of the plaintiff's cause of action for non-payment of the instalments. The correct date is the date of the Writ of Summons. At the time the Writ of Summons was issued on 21 February 2017, the plaintiff was only entitled to sue for non-payment of the first two (2) instalments of the amounts of GBP 10,000 and GBP 35,000 due on 13 and 31 January 2017 respectively. Plainly, no cause of action had arisen for the March, June and December instalments on the date the Writ of Summons was issued.

9 Counsel for the plaintiff, Ms Gan Kim Yuin ("Ms Gan"), submitted that the court should look at the 2015 loan agreement and consider how it was affected by two emails dated 7 January 2017. Her submission tracked the plaintiff's plea in the amended Reply that the 2017 loan agreement varied the 2015 loan agreement only to the extent provided, namely varying the repayment schedule. As the defendant failed to make payment according to the repayment schedule, the plaintiff was entitled to rely on the acceleration clause, namely cls 7(a) and (b) of the 2015 loan agreement, to demand all sums repayable under the loan agreement as varied, including interest.

10 Clause 7(a) provided that if the defendant breached the agreement, all outstanding sums under the agreement shall become immediately payable to the plaintiff on demand. It was accepted that the defendant breached the loan agreement having not paid the sums according to the repayment schedule in the 2017 loan agreement, save for a total payment of GBP 22,000 in March 2016 and February 2017. The defendant also did not dispute that he had not repaid any other amounts under the 2015 loan agreement prior to the variation in 2017.

11 Clause 7(b) provided for the same consequence if the defendant "shall become bankrupt or insolvent… or shall have any petition filed or notice issued or proceedings started for its winding-up, dissolution, reorganisation". The plaintiff claimed that two bankruptcy actions had been taken out against the defendant. Notably, the two bankruptcy actions referred to by the plaintiff were withdrawn long before the plaintiff's cause of action for non-payment of the two instalments arose. There was no evidence of any petition, notice, or proceedings started for the "winding-up, dissolution, [or] reorganisation" (which are not applicable to individuals). The requirements of cl 7(b) were thus not fulfilled.

12 Putting cl 7(b) aside, I found that the plaintiff was nevertheless entitled to rely on cl 7(a) of the 2015 loan agreement for repayment of all sums owing. The 2017 loan agreement only varied the 2015 loan agreement to the extent that the defendant was given more time to repay the sums owing under the 2015 loan agreement. It did not mean that the other terms in the 2015 loan agreement, including the acceleration clause in cl 7, had been superseded and were now inoperative. This is clear based on a reading of the January 2017 emails, where, following demands for repayment under the 2015 loan agreement sent by the

plaintiff in October and November 2016, the defendant stated that he would "send to [the plaintiff] a revised payment schedule". The defendant's proposal was made in relation to repaying the sums owing under the 2015 loan agreement. Where parties enter into two agreements, and the second agreement concerns the same substance as that of the first agreement, the former cannot be construed in isolation from the latter: *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 at [20]. Here, I found that the plaintiff and defendant only intended to vary the repayment schedule under the 2015 loan agreement and did not intend to extinguish the 2015 loan agreement completely, and the plaintiff was entitled to rely on cl 7(a) for full repayment of sums due.

The triable issues

13 Having found that the plaintiff has established a *prima facie* case for all sums due under the loan agreements read together, at this point, the defendant's first triable issue fell by the wayside. I did not accept the defendant's argument that there was a triable issue as to whether the 2017 loan agreement superseded and extinguished the 2015 loan agreement, and was the only agreement existing between the parties, or whether the 2017 loan agreement was merely a variation of the 2015 loan agreement. As stated, the available evidence showed that the terms of the 2015 loan agreement were still enforceable as between the parties, save for the repayment schedule varied by the 2017 loan agreement. Thus, the plaintiff had the right to invoke and enforce cl 7(a) of the 2015 loan agreement to demand immediate repayment of all sums owing.

14 The other triable issue raised by the defendant is whether the plaintiff was an unlicensed moneylender under the MLA. If so, the loan agreements

would be illegal and unenforceable against the defendant, giving him a *bona fide* defence. I accepted that s 14(2) of the MLA provides that a contract for a loan by an unlicensed moneylender shall be unenforceable and the sums under such a contract cannot be recovered in court. However, I found that there was no triable issue as it was clear that the plaintiff was not a moneylender within the meaning of the MLA.

15 The applicable principles are:

(a) The MLA prohibits the business of moneylending rather than the act of lending money: *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [30].

(b) A moneylender is a person who carries on or holds himself out as carrying on the business of moneylending: s 2 of the MLA. To determine whether a person is carrying on the business of moneylending, the court will inquire whether there is a "system or continuity in the transactions", *ie*, whether the loans are part of an ongoing and routine series of transactions made by the alleged moneylender. If there is no evidence of a system or continuity in the transactions, the alternative test to apply is whether the alleged moneylender "is ready and willing to lend to all and sundry provided that they are from his point of view eligible": *Mak Chik Lun v Loh Kim Her* [2003] 4 SLR(R) 338 at [11], affirmed in *Lim Beng Cheng v Lim Ngee Sing* [2016] 1 SLR 524 at [87].

(c) If the defendant can prove that the plaintiff has lent him a sum of money in consideration of a larger sum being repaid, the plaintiff would be presumed to be a moneylender under s 3 MLA and has to rebut

the presumption by proving that he is not carrying on the business of moneylending: *Sheagar* at [38].

16 Here, the plaintiff had lent the defendant the sum of GBP 353,978 to be returned for a larger sum, *ie*, together with an interest payment of GBP 24,906. The presumption in s 3 MLA applied and the plaintiff had the burden of proving that he was not a moneylender under s 2 MLA.

17 I was satisfied on the evidence that the plaintiff had rebutted this presumption. Neither test alluded to in [15(b)] above was satisfied. I will now elaborate on these matters.

18 At all material times, the defendant was a director and shareholder of a company known as Straits Partners Pte Ltd, a Singapore incorporated company in the business of private equity fund management. The plaintiff was at all material times a freelance trainer delivering training courses to employees of financial services companies. As between the parties, I agreed with Ms Gan that although the parties signed many agreements over the years, there were in substance only two loans made by the plaintiff to the defendant over a period of 14 years. The two loans were sums of GBP 225,000 in April 2004 ("2004 loan agreement") and GBP 150,000 in December 2007 ("2007 loan agreement"). It was not disputed that the defendant only repaid the sum of GBP 125,000 (excluding interest payments). By agreement, the outstanding sum of GBP 25,000 from the 2007 loan agreement and the GBP 225,000 from the 2004 loan agreement were bundled together in the May 2008 ("2008 loan agreement"). The defendant admitted that subsequent revisions to the 2008 loan agreement in the following years were made only to include outstanding interest to the existing loan and changes to repayment timelines. There was thus no more than

the occasional loan by the plaintiff to the defendant. I also accepted the plaintiff's evidence that the defendant had requested the loan and the plaintiff had lent him the money as an incident of his relationship with the defendant as friends. The defendant affirmed that they were friends in an email to the plaintiff dated 6 June 2012.

19 The plaintiff denied lending money to anyone else other than the defendant. In response, the defendant adduced two emails sent to him by the plaintiff as evidence that the plaintiff had done so. The first was dated 6 June 2012, where the plaintiff stated that he was "interested in increasing the scope of [his] underground lending activities", had "recently joined [ThinCats] (a.k.a. The Business Loans Network) as a lending member, and [was] considering making some P2P loans". The second was dated 8 August 2012, where the plaintiff stated that he "[was] interested in doing some more P2P lending". The defendant argued that this showed that the plaintiff had prior moneylending activities and was considering making more loans. However, I was satisfied with the plaintiff's explanations and evidence that (i) he had never lent money to anyone else other than the defendant; (ii) he had signed up for a ThinCats account (which was anyway a platform for loans to small businesses in the United Kingdom and not Singapore) but had never used it for any lending activity, and this was confirmed by the ThinCats administrator via email; and (iii) he had only stated that he was considering lending to more parties in response to the defendant's invitation to invest money for "short term bridging finance". I thus found that the plaintiff had proved that there was no system and continuity in the plaintiff's transactions, whether with the defendant or with third parties, such as to find that he was a moneylender.

20 The alternative test of whether the plaintiff was willing to lend to all and sundry provided that they were eligible from his point of view was also not satisfied. The plaintiff's loans to the defendant were made on the basis of their friendship. The defendant again referred to the plaintiff's ThinCats account, but I had already found that the plaintiff had not used his ThinCats account for any lending activity. Even if he had seriously considered it and intended to, this would not be regulated by the MLA, which regulated moneylending activities in Singapore and not in the United Kingdom (s 5 MLA).

21 Thus, I found that the plaintiff had rebutted the presumption of being a moneylender under s 3 MLA. The conclusion was clear based simply on the affidavit evidence and this was not a factual issue which ought to be tried. Accordingly, I affirmed the Assistant Registrar's decision that the defendant was liable to repay GBP 409,414 plus the contractual rate of interest thereof from 31 January 2017 until the date of final payment. The defendant was ordered to pay the costs of RA 233 fixed at $3,500.

Belinda Ang Saw Ean
Judge

Gan Kam Yuin and Timothy Quek (Bih Li & Lee LLP) for the plaintiff respondent;
Adrian Wee and Rachel Soh (Characterist LLC) for the defendant appellant.

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