CGU International Insurance plc v Quah Boon Hua and Others
[2000] SGHC 198

Case Number : Suit 1766/1999

Decision Date : 29 September 2000

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Fazal Mohamed Karim and M Anjalli (B Rao & KS Rajah) for the plaintiffs; Goh Peck San and Chiong Meng Chuan (PS Goh & Co) for the first defendant

Parties : CGU International Insurance plc — Quah Boon Hua

Credit and Security – Guarantees and indemnities – Letter of indemnity – Intention of parties – Letter of indemnity providing for three signatories but only two signatories signing – One signatory signing under impression that all three signatories will sign – Whether indemnity has legal effect against that signatory

Evidence – Admissibility of evidence – Hearsay – Signatory's state of mind – Signatory adducing evidence of what he was told at time of signing – Whether admissible in evidence

: This is a case in which the plaintiffs sued the three defendants under a letter of indemnity that the three had signed indemnifying the plaintiffs against all losses the plaintiffs may suffer as a result of issuing, at the request of the defendants, a performance bond for the sum of $383,222 to a company known as Low Keng Huat (S) Ltd for the due performance by the third defendants (Hua Tong Marble Works Pte Ltd) of its obligation to Low Keng Huat (S) Ltd under a supply and installation contract that the third defendants had entered into with Low Keng Huat (S) Ltd.

The first and second defendants were directors of the third defendants. There was a third director of the third defendants, one Lee Chee Sit; although provision was made in the letter of indemnity for a third director to sign, Lee Chee Sit had not signed the letter of indemnity.

Low Keng Huat had called on the performance bond and the plaintiffs had paid $383,222 under the bond to Low Keng Huat. In this action, the plaintiffs sought reimbursement of the said sum from the three defendants. Judgment in default of appearance was entered against the third defendants and, as the second defendant (Poh Ah Beng) had been adjudicated a bankrupt, the plaintiffs had filed proof of debt against him. The action therefore proceeded only in respect of the first defendant (Quah Boon Hua).

The first defendant raised a number of defences to the claim. Amongst them was a claim that he had been misled by the plaintiffs and by the second defendant into believing that the document he was signing was not a letter of indemnity but an application, to be signed by the third defendants and all the directors of the third defendants, for the issue of a performance bond. Lengthy submissions and copious authorities were cited in support of the defences raised. I saw no merit in these defences save for the plea in para 8 of the defence that it was a condition precedent to the signing of the letter of indemnity that all the directors of the third defendants would sign the said document and that as Lee Chee Sit was not a signatory, the document was ineffective as against the first defendant.

The evidence before me was that the first defendant was a minority shareholder of the third defendants (holding only 4.5% of the shares) and that, although he was a director, he was not involved in the day-to-day running of the third defendants. The first defendant told the court that when the second defendant asked him to sign the letter of indemnity (which at that time he was told

was to apply for a performance bond), he was told by the second defendant that all the directors of the third defendants would sign. The first defendant told the court that he signed only because he was told that all the three directors would sign. It was his evidence that as he was only a 4.9% shareholder, he would not have signed if he had known that the third director of the company was not going to sign. The letter of indemnity sent to the defendants by the plaintiffs for signature had provision for it to be signed by the third defendants and three directors. The letter of indemnity therefore accorded with what the second defendant was alleged to have told the first defendant.

As the second defendant was not a witness in the proceedings, the plaintiffs objected, on the grounds of hearsay, to the first defendant adducing evidence of what the second defendant was alleged to have said to him. Such evidence would be hearsay and inadmissible if the purpose for adducing the evidence was to prove the truth of what was said. In this case, however, the first defendant was adducing the evidence not in order to prove its truth but to explain his frame of mind when he signed the document. The evidence is admissible for such purpose. I accept the evidence of the first defendant that the second defendant in fact made those representations to him.

In this case, the plaintiffs would have been content if two out of the three directors of the third defendants had signed the letter of indemnity. In a letter to the third defendants they had so informed the third defendants. The letter of indemnity sent by the plaintiffs to the third defendants, however, did not provide for the signatures of only two directors but had specific provision in it for the signatures of three directors. The plaintiffs were unable to give any satisfactory explanation as to why they sent a letter of indemnity requiring the signature of three directors if they in fact required the signatures of only two.

The first defendant, although a director, played no executive role in the running of the third defendants. He could not therefore be expected to know the contents of the letter from the plaintiffs. His evidence that he did not know its content was credible and I accepted it. The plaintiffs, in submitting a document that required the signature of three directors of the third defendants, reinforced what the second defendant had represented to the first defendant, namely, that all the directors of the third defendants would be signing the document.

In **Indian Bank v Raja Suria & Ors** [1993] 2 SLR 497 , the letter of indemnity contemplated that seven directors of a company were to sign the letter of indemnity but only six in fact did so. It was held that the letter of indemnity was ineffective. In arriving at this decision, the Court of Appeal recognised that it was not a rule of law that where an instrument of guarantee was in the form or in terms that imply that it is to be executed by more than one guarantor who are to be jointly and severally liable, all must sign the instrument before any is bound. The crucial test, as stated by the Court of Appeal, is: what was the intention of the parties?

In this case, there were only three persons who were directors of the third defendants. The letter of indemnity sent to the first defendant for signature by the plaintiffs, on the face of it, made provision for all three directors of the third defendants to sign. By making such provision the plaintiffs were representing to the first defendant that the plaintiffs required all three directors of the third defendants to sign the letter of indemnity. I accept the evidence of the first defendant and find that the first defendant, in signing that document, did so under the impression that all three directors of the third defendants were expected to and would sign the document. I accept the first defendant`s evidence that as a minority shareholder he would not have signed unless all the directors were signing.

As, contrary to the intention of the parties, the letter of indemnity was signed by only two directors, that indemnity, following the principle in the ***Indian Bank*** case, would have no legal effect as against

the first defendant. The plaintiffs` claim against the first defendant is therefore dismissed with costs.

Outcome:

Plaintiffs` claim dismissed.