

Singapore Technologies Kinetics Ltd v Eco Fuels Solutions Asia, Inc and Others
[2007] SGHC 103

Case Number : Suit 685/2006, RA 95/2007
Decision Date : 28 June 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Adrian Wong and Firdaus Rubin (Rajah & Tann) for the plaintiff; Ng Lip Chih (Ng Lip Chih & Co) for the third defendant
Parties : Singapore Technologies Kinetics Ltd — Eco Fuels Solutions Asia, Inc; Anthony Alles; Teo Keng Leng Brandon

28 June 2007

Choo Han Teck J:

1 This was an appeal by the third defendant against the summary judgment ordered against him by the court below. The plaintiff's claim against the third defendant was for judgment based on a guarantee executed by the third defendant in the plaintiff's favour. The guarantee was to give comfort to the plaintiff in its acquisition of a share in a joint venture company that was to be incorporated to carry on the business of developing fuel emulsion technology and secure its investment. The first defendant was to be the co-shareholder of this company, and the second defendant was a director of the first defendant. The second defendant had signed the contract, described as a "Term Sheet" dated 17 May 2006, on behalf of the first defendant. The plaintiff terminated the agreement with the first defendant and sought to enforce the guarantee given by the third defendant that he will pay the plaintiff S\$5,000,000 if the first defendant failed to do so. This sum was the amount advanced by the plaintiff in contemplation of the joint venture proceeding according to the terms of the "Term Sheet". The third defendant was a party to the contract between the plaintiff and the first defendant.

2 The contract between the plaintiff and the third defendant was the contract in writing dated 17 May 2006 in which the third defendant gave his guarantee and subject to the terms there which included this term:

6. Continuing Security

The obligations of the [third defendant] under this Guarantee will remain in full force and effect by way of continuing security until no sum remains payable (whether actually or contingently) by [first defendant] under or in connection with the JVTS and [plaintiff] has irrevocably received or recovered all sums payable to it under or in connection with the JVTS. Furthermore, these obligations of the [third defendant] are additional to, and not instead of, any other agreement, security, guarantee or indemnity at any time existing in favour of any person, whether from the [first defendant] or otherwise, and may be enforced without first having recourse to the [first defendant], any other person or any other agreement, security, guarantee or indemnity.

3 It was in these clear words that the third defendant gave his guarantee. It was not his defence that the plaintiff had been paid. The third defendant's case was that the guarantee that he had given expired after five days. That was an allegation that was flatly contrary to the words of his

agreement set out above, that it was to be a continuing guarantee.

4 Alternatively, he claimed that the plaintiff had given the first defendant time to find another guarantee so that the one given by the third defendant could be discharged. Even if that were true, it was an agreement to which the third defendant was not privy and nothing in the affidavits indicated that a right accrued to the third defendant to enforce that alleged agreement between the plaintiff and the first defendant.

5 Lastly, the third defendant claimed that he was misled into giving the guarantee by reason of a misrepresentation by the plaintiff to him to the effect that his guarantee was only for five days. The court below also did not accept this claim. One of the court's reasons was that it would, if true, have meant that the plaintiff would be left without any security and that could not reasonably have been intended by the parties. I think that the inference drawn below was a valid and reasonable inference. However, given the size of the claim and the clarity of the contracts, not only between the plaintiff and the third defendant, but also the main one between the plaintiff and the first defendant, and the alleged third ground of defence based on misrepresentation, a defence that would have to be determined at trial as a question of fact, I decided to grant the third defendant an opportunity of persuading the trial judge that he fell for the alleged misrepresentation. However, that defence was, in the language of summary judgment applications, a shadowy one given the circumstances and the uncontroverted documents, and therefore, in my view, leave to defend should only be granted if the plaintiff's case was not prejudiced.

6 In this regard, a payment into court or the provision of a banker's guarantee, or a solicitor's guarantee for the full sum would be a fair condition to be imposed for the opportunity of testing his defence and I so ordered.