

Chua Siew Moi v Oh Thai Nan
[2003] SGHC 104

Case Number : Suit 605/2002
Decision Date : 03 May 2003
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Ong Ying Ping (Ong Tay & Partners) for the Plaintiff; Sadique Marican (Tito Isaac & Co) for the Defendant
Parties : Chua Siew Moi — Oh Thai Nan
Contract – Loans – Whether the plaintiff extended a loan to the defendant

- 1 The plaintiff Chua Siew Moi @ Erica Chua claimed against the defendant Oh Thai Nan @ Tonic Oh repayment of \$380,700 she lent to him.
- 2 They were business associates and were at one time “boyfriend-girlfriend”, as she described it.
- 3 The plaintiff’s case was that she issued seven cheques between 15 November 1996 and 17 June 1998 for a total sum of \$550,000 and received repayment of \$169,300. This was set out in para 2 of the statement of claim:-

	<u>Date</u>	<u>Chung Khiaw Bank Ltd Cheque No.</u>	<u>Amount</u>
a)	15 November 1996	077377	\$50,000.00
b)	3 March 1997	077385	\$100,000.00
c)	20 August 1997	077387	\$100,000.00
d)	7 October 1997	077388	\$100,000.00
e)	17 June 1998	707601	\$50,000.00
		<u>United Overseas Ltd Cheque No.</u>	
f)	12 June 1997	003762	\$100,000.00
g)	June 1998	003775	<u>\$ 50,000.00</u>
	Total Amount Lent By Plaintiff		\$550,000.00
h)	less Defendant’s partial payment by CKB		
	Cheque No 303497		<u>\$169,300.00</u>
	Amount Outstanding		\$380,700.00

4 In her affidavit of evidence-in-chief she confirmed that the defendant had made four other payments to her amounting to \$14,000.[1]

5 The defendant is a shareholder, secretary and director of a company known as Multi-Tech Distribution and Services Pte Ltd. The defendant admitted that the money changed hands from the plaintiff to him.[2] His defence is that \$200,000 of that was for the plaintiff's investment in 200,000 shares of the company on 12 September 1997,[3] and that she extended a loan of \$130,000 to the company to secure overdraft facilities of the company.[4] In the course of the hearing he produced the offer letter for the facilities. The letter was dated 11 September 1998 and the acceptance was dated the same day.[5] There was no requirement for security of \$130,000 or any higher sum.

6 The plaintiff is a shareholder and had been a director of the company. The company records show that the plaintiff was appointed a director on 19 August 1997[6] and served in the office up to 13 March 2000 when she resigned.[7] The records also show that she was allotted and had paid for 200,000 shares in the company on 12 September 1997 at \$1 a share.[8] The plaintiff did not dispute the authenticity of the records, and had not taken any action to set aside the allotment of these shares to her.

7 The defendant's position on the payments the plaintiff made is not always consistent. While his defence pleaded that \$200,000 was paid as investments in the company and \$130,000 was extended as a loan to it, his opening statement claimed that all the payments were "the Plaintiff's investment in the company as known to both parties." [9]

8 The defendant agreed that he paid the plaintiff the \$169,300 referred to in the statement of claim. In his evidence in court, he denied that it was a partial repayment of the loans as alleged by the plaintiff. He said that the payment was made in connection with dealings between him and the plaintiff in connection to a labour supply or recruitment agency and to equipment purchased, and the payment was made to clear accounts between them in those dealings.[10] This was not pleaded in his defence, and was not raised with the plaintiff in disregard of the rule enunciated by Lord Herschell in *Browne v Dunn* (1894) 6 R 67 at 70 that it is

(a)bsolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit.

9 He tried to justify the omissions by explaining that "I thought later on I can explain to the court." [11] That cannot be disposed of so easily; if he really believed that, he was badly advised. There was no record of any kind produced to show the recruitment agency/equipment accounts or to show that the payment of \$169,300 squared the accounts.

10 The accounting records of the company produced at the hearing were incomplete. Nevertheless they were of assistance in showing whether the plaintiff's payments were loans to or investments in the company.

11 In particular there were the company's accounts for the year ending 31 December 1997 signed by the defendant as director. [12] These accounts recorded amounts owing to director at \$49,374 and \$31,768 for 1997 and 1996 respectively [13] with the explanatory note that "The amount of \$49,374

(\$31,768 in 1996) owing to a *director* is unsecured, interest-free and with no fixed term of repayment.”[\[14\]](#) (Emphasis added)

12 These were loans from one director. Since the plaintiff was not a director in 1996 (she was appointed in 19 August 1997) she cannot be the director who made the loans, and the defendant conceded this.[\[15\]](#) And since the only recorded loans came from that one director, the accounts must be taken to mean that there were no loans from the plaintiff over that period.

13 In the course of the hearing the defendant sought to fortify his case with the company’s financial records to show that the payments the plaintiff made were received and treated by the company as loans. He filed a further affidavit and exhibited what purported to be a part of the company’s general ledger. He deposed he had just managed to retrieve it and was unable to produce it earlier because of the multitude of company’s records.[\[16\]](#) The ledger was for loans from the plaintiff to the company in June-December 1998.[\[17\]](#)

14 A witness was called to explain the ledger. He was Tan Sing Lin, a freelance accounts clerk who prepared the general ledger. It transpired from his evidence that the ledger entries were not made contemporaneously with the transactions in 1998. Tan revealed that all the entries were made by him only a few months previously, on the instructions of the defendant who instructed him the payments were loans.

15 Tan’s evidence did not assist the defendant at all. It only lead to further questions. Why were the entries not made contemporaneously in 1998? If the ledger was prepared a few months previously by Tan, why was it not disclosed earlier in the action? Why were the pay-in slips for these payments which Tan said were shown to him not disclosed or produced even at the late stage of the proceedings? I did not accept that ledger as an authentic record of the transactions referred to.

16 Another point of interest is that the ledger did not record the loan of \$130,000 mentioned in the defence. As the credit facilities were offered and accepted in September 1998, it would be expected that a \$130,000 loan the plaintiff made to secure the facilities will be reflected in the ledger ending 31 December 1998. In fact the ledger showed loans amounting to \$125,000 made over seven payments starting in June, before the bank’s loan offer was made.

17 The manner in which the ledger was produced and explained raised disturbing questions over the defendant’s good faith. If he had hoped that it would give substance to his assertion that the plaintiff made loans to the company, he would be disappointed, for they had quite the opposite effect. It reflected and underscored its lack of substance.

18 It was noteworthy that his counsel made no reference to it in the closing submissions. Instead counsel complained that

Assuming for the present purposes that all the monies extended were indeed loans, her Statement of Claim must fail, as she has not pleaded all the conditions for these purported loans.

In particular, at no point during the course of any one of these loans did the Plaintiff aver in her Statement of Claim to any condition of repayment i.e. whether at the time of each of these loans any condition of repayment was communicated, made or agreed between the parties.[\[18\]](#)

19 Counsel placed strong reliance on the decision in *Tay Ivy v Tay Joyce* [1992] 1 SLR 893 for his submission that

Not only is the present Plaintiff silent on the critical issue of the exact conditions relating to repayment in her Statement of Claim at the time of the disbursement of these purported loans, her Affidavit also makes no mention of this/these.[\[19\]](#)

20 That case does not help him at all. Michael Hwang JC affirmed the rule that a loan simpliciter is repayable from the date it was made. The plaintiff there alleged that there was an agreement that repayment of a loan was to be deferred. The action was time-barred if there was no deferment. The agreement to defer was not pleaded, and the judge found that the rule was not displaced. The issues were fundamentally different. In the present case there are no specific repayment terms alleged and the plaintiff was relying on the rule.

21 Another part of the judgment is more relevant to the issue in this case. At p 900 the judge dismissed the plaintiff's appeal because he found that

(T)here is a basic contradiction between the plaintiff's case as pleaded and his case as disclosed by the evidence adduced on his behalf at trial. The two conditions referred to in the evidence of the witnesses were never pleaded and it is clear that *the court should not give judgment on the basis of a case which has not been pleaded*. (Emphasis added)

22 That is so, and a court also should not uphold a defence which is not pleaded, whether it relates to the purpose of the \$169,300 repayment, or the terms of the loans, all the more when they are devoid of substance.

23 After reviewing the evidence, I found that the plaintiff should give credit for the \$14,000 she received. Secondly, I found that the defendant failed to prove that of the payments the plaintiff made, \$130,000 or any other sum was advanced as loans to the company. Finally, I found that \$200,000 of those payments was payment for the shares allotted to her.

24 Consequently, I entered judgment for the plaintiff for \$166,700. Since that sum was within the jurisdiction of the District Courts, I awarded costs of the action to the plaintiff to be taxed on the District Court scale.

[\[1\]](#) Plaintiff's affidavit of evidence-in-chief para 9 and exh. EC-12

[\[2\]](#) Defendant's Opening Statement paras 11 and 12, Notes of Evidence pages 88-9

[\[3\]](#) Defence para 2

[\[4\]](#) Defence para 3

[\[5\]](#) Defendant's affidavit of 24 January 2003, exh OTN-4

[\[6\]](#) PB26

[\[7\]](#) PB30

[\[8\]](#) AB27-28, Notes of Evidence pages 72-92

[\[9\]](#) Defendant's Opening Statement para 12

[\[10\]](#) Notes of Evidence pages 62-4

[\[10\]](#) Notes of Evidence pages 63-4

[\[11\]](#) Notes of Evidence page 68

[\[12\]](#) AB32-46

[\[13\]](#) AB37

[\[14\]](#) AB36

[\[15\]](#) Notes of Evidence page 82

[\[16\]](#) Defendant's affidavit of 23 January 2003, paras 6 and 20

[\[17\]](#) same affidavit exh. OTN-2

[\[18\]](#) Defendant's Closing Submissions, paras 15 & 16

[\[19\]](#) Defendant's Closing Submissions, para 20

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