

Malayan Banking Berhad v Measurex Engineering Pte Ltd and Another
[2002] SGHC 192

Case Number : Suit 412/2000/V, RA 112/2002
Decision Date : 26 August 2002
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Johnny Cheo (Cheo Yeoh & Associates LLC) for the appellant/second defendant;
Herman Jeremiah and Joshua Wong (Helen Yeo & Partners) for the
respondent/plaintiff
Parties : Malayan Banking Berhad — Measurex Engineering Pte Ltd; Measurex Corporation
Berhad

Judgment

GROUNDS OF DECISION

The parties

1. The plaintiff is a bank. The first defendant was a customer of the plaintiff with credit facilities in the form of a revolving credit facility and an overdraft facility. The second defendant was the guarantor for the facilities.

The action

2. The plaintiff claimed against the second defendant as guarantor sums due under the facilities. The plaintiff obtained summary judgment in the first instance that the second defendant was to pay it

1. the aggregate of the sums of US\$3,102,254.71 and S\$1,990,311.67;
2. interest on the sums of US\$3,102,254.71 and S\$1,990,311.67 at the rates of 3.5% p.a. above the Plaintiff's prevailing US\$ Cost of Funds and 5% p.a. above the Plaintiff's S\$ Prime Rate respectively from 1 December 2000 to judgment.

3. The second defendant appealed to a judge in chambers and succeeded to the extent that it was ordered on 29 June that the judgment sums were reduced to US\$3,100,937.72 and S\$1,957,756.05 with interest thereon as previously ordered.

4. The second defendant appealed further to the Court of Appeal. The appeal was allowed in part when the Court ordered that interlocutory judgment be entered against the second defendant for principal and simple interest to be assessed by the Registrar, and that unconditional leave be given to the second defendant to defend the plaintiff's claims for compound interest and default interest.

5. The matter then went before an Assistant Registrar for the assessment of the sums payable. On 19 April 2002 after hearing witnesses and counsel the Assistant Registrar ordered that

1. Final judgment for the Plaintiff against the 2nd Defendant as follows:
 - a. in relation to the revolving credit facility for the principal sum assessed at US\$2,935,250.24. for simple interest from 9 May 2000 to 30 November 2000 assessed at US\$115,518.31 and for further simple interest on the sum of US\$2,935,250.24 at 6% per annum from 1 December 2000 to date of judgment; and

b. in relation to the overdraft facility for the principal sum assessed at S\$1,609,688.51, for simple interest from 7 November 1995 to 30 November 2000 assessed at S\$256,866.81 and for further simple interest on the sum of S\$1,609,688.51 at 6% per annum from 1 December 2000 to date of judgment;

2. Nothing in this order shall preclude the Plaintiff from expressly claiming as against the 2nd Defendant any charges or commission or expenses, howsoever described, after amending its Statement of claim to identify such sums as may be claimed, or to apply for summary judgment on such claims;

3. Nothing in this order shall preclude the Plaintiff from pursuing the claims that have not been allowed in this assessment at the trial of the action.

6. The second defendant was dissatisfied with the order and brought the present appeal before me.

The appeal

7. There were two matters under appeal. The first related to a 1.5% spread in the revolving credit facility. Counsel for the second defendant argued that "(i)n the computation furnished by the Plaintiffs' lawyers in respect of the Revolving Credit Facility ... the Plaintiffs had charged "All-in interest rates" at Cost of Funds ("COF") plus 1.5% spread ..." and that "(i)t is to be noted that the Facility Letter makes no reference whatsoever to the Spread of 1.5%. All that the Plaintiffs can show in support of their claim are *the letters from the Borrower who had agreed to an "aggregate" rate of interest* or the total sum of interest for the period from 9 May 2000 to 2 August 2000." (Emphasis added)

8. Counsel contended that the spread should not be permitted because

(1) there is no specific agreement by Borrowers for Spread; and

(2) the Second Order which sets out the parameters for the assessment makes no reference to this Spread of 1.5%;

(3) notwithstanding the fact that the Borrower has agreed to pay an aggregate rate of interest, the Court has excluded default interest, from the computation. Similarly the 1.5% Spread should be removed as it is not simple interest.

9. The second matter under appeal is order 3 of 19 April 2002. The second defendant's grievance was that "(a)lthough the [order] may appear to accord with approach of the Assistant Registrar that he proceeded with the assessment on the basis that it is a Order 14 hearing, nevertheless there is a significant difference. In the assessment witnesses were called gave evidence and cross-examined under oath. In the premises there is no reason for the Plaintiffs to have a second bite at the trial to claim for COF."

The entitlement to the spread

10. The 1.5% spread arose in the interest charged in the revolving credit facility. The plaintiff charged interest based on the cost of funds plus 1.5%.

11. The second defendant was correct in its contention that there was no reference to the spread in the facility letter offering the facilities. The facility letter had provided that "Advances for periods of 1, 2, 3 or 6 months at your option on a rollover basis at mutually agreed rates to be determined on the date of drawdown, subject to availability of funds."

12. However it was not the plaintiff's case that the spread was specifically referred to and agreed upon. Its case was that the

spread was a component of the interest charged. This was explained by its solicitors to the second defendant's solicitors on 25 March 2002 that "the spread of 1.5% per annum that was charged was part of what was agreed with the borrower and was rightly charged to and paid by the borrower." This was also reflected in the plaintiff's Statement of Principal and Simple Interest, which referred to the "All-in interest at COF + 1.5%." Furthermore the plaintiff's Head of Corporate Banking deposed in an affidavit that the all-in interest rates charged by the plaintiff were agreed to by the first defendant. Letters evidencing the borrower's confirmation of the rates for the period for which interest on the all-in interest rates was awarded were exhibited thereto.

13. On the evidence, it was clear that the interest rates were agreed to. It was not open to the borrower or the guarantor to object to them now, whether in full or to any component thereof. There is no merit in the second defendant's argument that the 1.5% spread should be removed from the agreed interest rates.

The right to proceed with the claim for cost of funds

14. The order under appeal was in broad terms with no reference to the cost of funds -

Nothing in this order shall preclude the Plaintiff from pursuing the claims that have not been allowed in this assessment at the trial of the action.

15. The Assistant Registrar was directed by the Court of Appeal to assess the principal sums and simple interest owing and payable by the second defendant. It really did not need saying that his assessment of those two sums cannot affect any other claims the plaintiff may have. The assessment was consequential to a summary judgment obtained by the plaintiff. A summary judgment does not shut out any part of a plaintiff's claims; what it does is to obviate trials of those claims for which judgments are given. Any other claim that the plaintiff wishes to pursue shall go for trial, and its success or failure will be determined there.

16. The Assistant Registrar was stating the obvious. The only matters that had been conclusively determined were the principal sums owing and the simple interest accruing on them. The plaintiff having made its claim for costs of funds as an element of the interest it charged is not allowed to revisit this at the trial. There was no indication of any further claims for cost of funds. To the contrary, counsel for the plaintiff confirmed in the appeal before me that the plaintiff will not claim for cost of funds at the trial.

17. On the basis of the foregoing, the second defendant's appeal was dismissed. The Court of Appeal will rule on these issues when it hears the second defendant's appeal against my decision.

Sgd:

Kan Ting Chiu

Judge

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