(14)

IN THE SEYCHELLES COURT OF APPEAL

GENERAL INSURANCE COMPANY LTD APPELLANT

versus

SWISS REINSURANCE COMPANY LTD RESPONDENT

Civil Appeal No: 24 of 1999

[Before: Ayoola, P., Pillay & Matadeen, JJ.A]

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Mr. P. Pardiwalla for the Appellant
Mr. A. Derjacques for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen, J.)

This is an appeal against a judgment of the Supreme Court in favour of the respondent company which had brought an action against the appellant company based on an acknowledgement of debt.

The evidence before the Learned Judge shows that the acknowledgement of debt was signed on behalf of the appellant company by Mr. Bernard Etzin, one of its directors, whereby the latter acknowledged that the appellant company was indebted to the respondent in the sum of Rs.960,712.47 and undertook to repay that amount by 64 monthly instalments of Rs.15,000 with effect from 31st March 1995.

It was further stipulated that any instalment not paid by the due date would not only carry interest at the rate of 10% per annum but also enable the respondent to recover immediately the amount of the debt remaining unpaid. As only two instalments were duly paid, the respondent brought an action in September 1995 before the Supreme

Court to recover the amount remaining unpaid as well as interest at 10% on the instalments for June, July and August 1995.

It was not disputed before the Supreme Court that the acknowledgement of debt was duly executed in accordance with Article 1326 of the Civil Code and that Mr. Bernard Etzin was one of the directors of the appellant company.

The defence of the appellant before the Supreme Court was essentially twofold. First, it claimed that one director, acting alone could not bind the company. Secondly, that the director, Mr. Etzin, was acting under duress when he signed the document.

After hearing evidence, the learned Judge found on the facts and in law that the single director could bind the appellant company and that Mr. Etzin was not acting under duress. He therefore gave judgment in favour of the respondent with interest at 10% with effect from the date of filing of the suit.

The present appeal seeks to challenge the findings of the learned Judge on the twin issues of authority to bind the company and duress.

Learned Counsel for the appellant company has urged before us that Mr. Bernard Etzin acting alone could not bind the company. He has submitted that the appellant company is a company limited and that, pursuant to Section 34 of the Companies Act as well as Article 51 of the articles of association, one director acting alone could not bind the company. He has further claimed that the provisions of Section 39 support his contention, the more so in the absence of any authorisation by a general meeting.

We do not agree. True it is that directors are required in terms of Section 171(1) of the Companies Act to obtain the authorisation of a general meeting before doing any act or entering into any transaction for which the authorisation of the general meeting is required. But, as rightly pointed out by the learned Judge, that Section does not affect the operation of Sections 33, 34 and 39 of the Act by reason of the proviso to Section 171(1) which reads as follows:-

> "Provided that nothing in this section shall affect the operation of Sections 33, 34 and 35."

Indeed, Section 39(2) provides that:-

> "A person who deals with another person who is represented by the directors ... as having authority to act on the company's behalf in connection with any transaction, may treat the company as bound by the acts of that person done within his apparent authority, even though he has not been authorised by the company to do those acts on its behalf."

In order to establish that Mr. Bernard Etzin was presented by the directors as having authority to bind the appellant company, the respondent did adduce a number of facts of representation which the learned Judge had found proved. These included a number of previous dealings between the parties as well as an exchange of correspondence which spanned over a number of years. All the documents produced show that they were signed by Mr. Bernard Etzin alone in his capacity as director. Indeed, the evidence also shows that the contract of reinsurance with the respondent was signed by Mr. Bernard Etzin alone. These facts of representation were further supplemented by the evidence of Mr. Bernard Etzin himself as well as that of Mr. Bonte, a former director of

the appellant company. Their evidence confirms the fact that Mr. Bernard Etzin had implied authority to act on behalf of the company. All these facts of representation were duly considered by the learned Judge and led him to conclude that Mr. Bernard Etzin had the necessary authority to bind the appellant company. His finding on that score cannot therefore be impeached.

We shall now turn to the ground of appeal which challenges the learned Judge's finding that the director, Mr. Bernard Etzin, was not acting under duress when he signed the acknowledgement of debt. It is trite law that duress against a contracting party is a ground of nullity if it is proved that the duress was the main reason for the contracting party entering the contract [vide: Article 1111] and that the duress must be of a kind to impress a reasonable person and put him in fear of substantial harm in respect of his person or property [vide: Article 1112].

In order to prove duress, the appellant company called Mr. Etzin to establish that duress was exercised against him when he was called to the office of counsel for the respondent company and the latter, waving a paper, most probably in the form of a summons, threatened court action against his company for non-payment of debt, and that he thereupon signed the acknowledgement of debt on behalf of the appellant company.

However, the evidence also shows that Mr. Bernard Etzin who at the time of signing the acknowledgement of debt was 67 years old was, as found by the learned Judge, an experienced, intelligent and outstanding businessman in Seychelles and was not a newcomer to the courts of Seychelles, either as a litigant or as a witness. The learned Judge took all those matters into consideration, as he was entitled to under Article 1111-2, and found that the threat of legal action, if any, could not have been of the kind to impress Mr. Bernard Etzin and put him in fear of substantial harm in respect of his property.

At any rate, a threat of legal action, which the respondent company was lawfully entitled to initiate in view of the indebtedness of the appellant company, cannot, in terms of Article 1113-1, nullify the acknowledgement of debt "unless the promise obtained is excessive having regard to the nature of the offer." However, the learned Judge found that the promise to pay Rs.960,712.42 in 64 monthly instalments of Rs.15,000 with effect from 31st March 1995 could not be excessive, having regard to the fact that the original sum owed as at 1981 stood at Rs320,000, the more so as there was an abortive agreement to pay a sum of Rs.600,000 by 12 monthly instalment of Rs.50,000.

It is clear that the amount of Rs.960,712.42 was inclusive of interest until the date of final payment on 31st July 2000. It is pertinent to note in that regard that Mr. Bernard Etzin, representing the appellant company, not only agreed to the amount as well as the manner of computation and, in his own words, signed the document "in good faith as an honest man", but also started giving effect to the acknowledgement of debt by paying two instalments by the due date. In the circumstances, we hold that the learned Judge's finding that Mr. Bernard Etzin did not sign the acknowledgement of debt under duress cannot be faulted.

The appellant had also challenged the award of interest at the rate of 10% on the amount awarded by the learned Judge. We agree that a rate of 10% was not warranted in the circumstances, and this for two reasons. First, the acknowledgement of debt clearly stipulated that such rate of interest would apply only to an unpaid instalment; and, second, the evidence did show that the sum of Rs.960,712.47 was computed in such a way as to be inclusive of interest up to the date of final payment. In the circumstances, we amend the order of the learned Judge relating to the award of interest by substituting therefor an award of interest at the legal rate on the unpaid portion of the debt with effect from the filing of the suit

and interest at the rate of 10% only on the instalments unpaid at that time.

The appeal is, for the reasons we have given above, otherwise dismissed, with costs.

E. O. AYOOLA	A. G. PILLAY	K. P. MATADEEN
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 17 day of December 1999.