

# **IN THE SUPREME COURT OF SEYCHELLES**

Octave Tirant

Of Victoria, Mahé

**Plaintiff**

Vs

NX Plastics Products Co. Ltd

**Defendant**

Civil Side No. 199 of 2003

=====  
Mr. P. Pardiwalla for the plaintiff

Mr. P. Boullé for the defendant

**D. Karunakaran, J.**

## **JUDGMENT**

This is an action under summary procedure on bills of exchange originally instituted pursuant to Section 295 of the Seychelles Code of Civil Procedure. The plaintiff through his counsel Mr. Pardiwalla issued a writ of summons dated 16<sup>th</sup> July 2003, claiming Rupees One Million and Three Hundred Thousand (SR 1, 300,000/-) from the defendant-company, which sum became due and payable under three cheques, which were allegedly drawn by the defendant in favour of the plaintiff. The writ summons was served on 1<sup>st</sup> August 2003 at the Registered Office of the defendant situated at Arpent Vert Building, Mont Fleuri, Mahé. This was also the office of the secretary of the defendant-company namely: Corporate Secretaries and Administrators (Pty) Ltd, which was managed by one Mr. Fredrick Savy, who was none else than the auditor of the defendant-company.

The said writ of summons stated inter alia, thus:

*“Take Notice that if the defendant do not obtain leave from a Judge of the Supreme Court within 12 days after having been served with this writ., to appear thereto, and do not within such time cause an appearance to be entered for him in the Court out of which this writ issues, the plaintiff will be at liberty, at any time after the expiration of such twelve days, to sign final judgment...”*

*Leave to appear may be obtained on application at the Judge’s Chambers, Court House, Victoria supported by affidavit showing that there is defence to the action...”*

However, the defendant did not apply for leave to appear, within the stipulated period, Therefore, on 29th of August 2003, the Court entered judgment for the plaintiff and against the defendant NX plastics Product Co. Ltd represented by its Director Jiang Jilali in the sum of SR1, 300,000/together with costs at SR1451-

On 9th of October 2003, at the instance of an application made by the plaintiff, the said judgement was executed by a warrant of levy against the goods and chattels of the defendant. These items still remain under seizure but entrusted in defendant’s’ custody. With those background facts, the defendant came before the Court by way of motion dated 13<sup>th</sup> October 2003 seeking orders to:

- (1) set aside the judgment*
- (2) set aside execution of the judgment*
- (3) grant leave to appear to the Writ-Summons; and*
- (4) defend the action.*

Having heard the parties on the said motion, the Court accordingly,

*(a) set aside the judgment entered in favour of the plaintiff, on 29th of August 2003 in this matter,*

*(b) granted leave for the defendant to appear to the Writ-Summons and defend the action; and*

*(c) granted a stay of execution of the judgment.*

The motion was thus granted on the following conditions:

- (i) The defendant should file the statement of defence within a period of three weeks from the date thereof.*
- (ii) The defendant should not sell, transfer or dispose of any of the seized goods and chattels that were entrusted by the process officer in defendant's custody, until further order: and*
- (iii) The defendant should pay all the costs to the plaintiff so far incurred in this matter*

. The defendant accordingly filed the statement of defence denying liability. The case was heard inter parte.

The plaintiff Mr. Tirant, a businessman testified in essence that on 1<sup>st</sup> August 2002 he entered into a distribution agreement (in exhibit P1) with a company by name: "Island Tobacco Seychelles Limited" for the distribution of cigarettes, supplied by that company. At all material times, Mr. Luo BangXiang was the Managing Director of the said company. He was the one who signed the agreement on behalf of the company and received the sum of Rs2, 000,000/- from the plaintiff as Security Deposit in pursuance of the said agreement. Acknowledging the receipt of the said sum, Mr. BangXiang also signed and issued a receipt to the plaintiff, dated 1<sup>st</sup> August 2002 (in exhibit P2) on behalf of the said company confirming that he received the said sum from the plaintiff. As per the terms of the agreement the deposit amount was repayable to the plaintiff after 8 months from the date of the agreement. During the same period, Mr. BangXiang was also a director and majority shareholder of another Company by name **NX Plastics Pty Limited**, the defendant in the present action. The defendant-

company had also been registered under the Company Act and had been engaged in business operations in Seychelles. Besides Mr. BangXiang, who owned 67% of the shares in the defendant-company, there were also two other directors namely: Mr. Zhou Jin Hua and Mr. Chan Sing Chung, who had owned 23% and 10% shares respectively, in that company.

After the expiry of 8 months, the plaintiff requested Mr. BangXiang for the refund of the deposit sum. In May 2003, Mr. BangXiang refunded Rs 500,000/- in cash as 1<sup>st</sup> instalment and agreed to pay the balance Rs 1,500,000/- by four subsequent instalments. Accordingly, he gave four post-dated cheques to the plaintiff for the total sum Rs 1,500,000/- All those cheques were drawn on Banque Française Commercial from an account held in the name of the defendant-company. All four cheques were duly signed by its Director Mr. BangXiang. Upon the due date the plaintiff, presented one of those four cheques - Cheque No: 1801475 - for Rs 200,000/- dated 26<sup>th</sup> March 2003, to the bank. The cheque was honoured by the bank; the plaintiff received the amount. However, the other three cheques were upon presentation dishonoured by the bank and returned to the plaintiff without payment. They are:

1. Cheque No:1801476 dated 30/04/2003 for Rs400, 000/- drawn in favour of the plaintiff;
2. Cheque No:1801477 dated 30/05/2003 for Rs400, 000/- drawn in favour of the plaintiff; and
3. Cheque No:1801478 dated 30/06/2003 for Rs500, 000/- drawn in favour of the plaintiff

In the circumstances, Mr. Pardiwalla, learned counsel for the plaintiff contended that the defendant-company is liable to pay the sum Rs1, 300,000/- to the plaintiff under the said three cheques, which were

dishonoured by the bank upon presentation. Therefore, the plaintiff seeks this Court for a judgment in the said sum and with costs.

On the defence side, one Mrs. Jai Li Jiang - DW1- a businesswoman testified that at all material time, she and her husband were directors of the defendant-company along with Mr. BangXiang, who was also a director and majority shareholder of the defendant-company NX Plastics. According to her, NX Plastics never owed any money to the plaintiff nor was it liable to pay any sum to the plaintiff as it had no business dealings with him. Although she admitted that Mr. BangXiang had authority to sign cheques and operate the bank accounts of the defendant-company, he had no authority to do any transaction with the plaintiff involving 2 Million Rupees. According to her, Mr. BangXiang has issued the cheque without the authority and knowledge of the other directors of the defendant-company. She admitted in cross-examination that although she told the Court Process Server that Mr. BangXiang was dead, when the latter approached her at the company premises to serve summons in the instant matter, she maintained that she was simply joking with him. Furthermore, she testified that in 2003, Mr. BangXiang left the Republic for good and since then the defendant-company has been defunct. Although the defendant called one Mr. Antoine Almaz (DW2), Manager of Nouvobanque, he did not give any relevant evidence pertaining to the defence or the issues joined by the parties in this matter.

In the circumstances, Mr. Boullé, learned counsel for the defendant submitted that the defendant-company has drawn the cheques in dispute, erroneously in favour of the plaintiff while there was no debt due to the plaintiff by the defendant. Although Bills of Exchange Act creates a presumption that a valuable consideration should have passed from the beneficiary to the drawer in all cheque transactions, such presumption is rebuttable. In the present case, according to Mr. Boullé, the defendant has rebutted that presumption by adducing evidence to show that there was no

consideration. This has rendered the cheques valueless. Further, Mr. Boullé submitted that two documents namely, the Distribution Agreement between the “Island Tobacco Seychelles Limited” and the plaintiff and the Receipt issued by Mr. BangXiang to the plaintiff have nothing to do with the defendant-company nor do they create any liability on the part of the defendant-company. Therefore, it is the contention of Mr. Boullé that the defendant-company is not liable for the debt owed by “Island Tobacco Seychelles Limited” to the plaintiff. In support of his contention, Mr. Boullé cited the following authorities:

- Pillay vs. Pillay - Civil Appeal No: 5 of 1984 Court of Appeal
- Willy Nancy vs. Sunstroke Civil Side No: 180 of 1993 - Supreme Court
- Payet vs. Faure Civil Side No: 15 of 1996 - Supreme Court

Having carefully sieved through the pleadings, evidence, submissions and authorities cited by counsel, I find the following questions arise for determination in this matter:

- 1. Did Mr. BangXiang issue the cheques in question by mistake or error to the plaintiff?*
- 2. Did Mr. BangXiang have lawful authority to draw those cheques in favour of the plaintiff?*
- 3. Was there valuable consideration present in the entire transaction to render those cheques valid? and*
- 4. Is the defendant-company liable to pay plaintiff the amount due under those three cheques?*

It is not in dispute that Mr. BangXiang had been one of the directors and majority shareholder of the defendant-company. Admittedly, he had lawful authority to sign, draw and issue the company’s cheques to the plaintiff or to anyone for that matter. It is evident from the testimony of Mrs. Jai Li Jiang - DW1- Manager of the defendant-company that Mr.

BangXiang had unrestricted authority at the material time to sign and issue cheques on behalf of the defendant-company in respect of any transaction. The drawee bank also used to accept him as signatory and has honoured the cheques previously signed by Mr. BangXiang on behalf of the defendant-company. During the same period, Mr. BangXiang was also the Managing Director of the other company “Island Tobacco Seychelles Limited” which had business transaction with the plaintiff. Obviously, having been the Managing Director and Director in a number of companies, Mr. BangXiang was a reasonable businessman, not a layperson or an illiterate to write and issue cheques by mistake or through negligence or error to the plaintiff without knowing that he was drawing the cheques from the account of the defendant-company. It is evident that he has done so honestly with clear intension to pay off the debt the “Island Tobacco Limited” owed to the plaintiff and so this court finds. In the normal course of events, an act of drawing and issuing a cheque to any third party is a thing the drawer does within the meaning of the Bills of Exchange Act. In fact, law creates a presumption of good faith in the defendant’s act of drawing and issuing the cheques to the plaintiff or to any third party. It doesn’t matter whether it is made for the repayment of the debt the “Island Tobacco” owed to the plaintiff or anyone else. The presumption of good faith is activated by operation of law even if it had been done negligently or not. It is pertinent to note that Section 96 of the Bills of Exchange Act reads thus:

*“A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact, done honestly, whether it is done negligently or not”*

In any event, the presumption of good faith is activated by operation of law in favour of the plaintiff, which presumption has not been rebutted by the defendant by adducing any credible or positive evidence in this matter. Therefore, this Court finds that Mr. BangXiang issued the cheques in question to the plaintiff in good faith, correctly, honestly and deliberately, not by mistake or though error to pay off the debt. Besides, this Court finds

on evidence that Mr. BangXiang had lawful authority at the material time, to draw those cheques in favour of the plaintiff. These findings indeed, answer the questions No: 1 and 2 above.

Moving onto question No: 3 above as to valuable consideration, it is not in dispute that the plaintiff had paid Rupees Two million to Mr. BangXiang, who received that sum on behalf of the company as a refundable deposit. This obviously, constitutes “*a valuable consideration*” for the issuance of the cheques to the plaintiff towards the refund of the deposit. In fact, issuing of a cheque by the defendant-company is not an act of its trade vide Section 74 of the Bills of Exchange Act. Hence, it is not necessary that in all cases the issuance of cheques by the defendant-company should relate to the trade it was engaged in or it should have incurred a debt before the issuance of a cheque to the payee or any beneficiary as Mr. Boullé is trying to convince this court. At any rate, Section 30(1) of the Act reads thus:

*“Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value”*

This legal presumption activated in favour of the plaintiff has not been rebutted by the defendant in this matter and so this Court finds on evidence. Having considered the entire circumstances surrounding the financial transactions between the parties and the shared-financial interest Mr. BangXiang commonly had in both companies, I conclude that there has been a valuable consideration for the issuance of the cheques to the plaintiff by the defendant-company, which renders those cheques valid for all legal intents and purposes. This answers question No: 3 supra.

Even if one assumes for a moment that the defendant-company issued those cheques to the plaintiff without receiving any value therefor, still the defendant-company is liable on the instrument to the plaintiff, who is a holder for value, notwithstanding such holder, at the time of taking the instrument, knew the defendant-company to be only an accommodating party.



In accommodation transactions as recognized by the English Negotiable Instruments Law, the accommodating party (the defendant-company) lends its credit to the accommodated party ("Island Tobacco Seychelles Limited), by issuing or indorsing cheques which are held by the payee (the plaintiff herein) as a holder in due course, who gave full value therefor to the accommodated party ("Island Tobacco Seychelles Limited). The payee, in other words, receives or realizes full value of the instruments/cheques he holds. The accommodated party (the "Island Tobacco Seychelles Limited) then must repay to the accommodating party, (the defendant-company) unless of course the accommodating party (the defendant-company) intended to make a donation to the accommodated party. But the accommodating party (the defendant-company) is bound on the cheques to the payee (the holder in due course), who is necessarily a third party and is not the accommodated party.

Having thus issued or indorsed the cheques, the accommodating party has impliedly warranted to the plaintiff or holder in due course that it will pay the same according to its tenor. Therefore, the defendant-company as accommodating party has recourse to recover the sum from the accommodated party namely, ""Island Tobacco (Seychelles) Ltd" . Be that as it may.

In view of all the above, this Court finds that the defendant-company is liable on the face of the instruments to pay plaintiff the amount due under all those three cheques hereinbefore mentioned. Accordingly, I enter judgment for the plaintiff and against the defendant in the sum of Rupees One Million and Three Hundred Thousand (SR 1, 300,000/-) and with costs of this action.

.....

**D. Karunakaran**

**Judge**

**Dated this 20th day of June 2012**