

PROTECTION OF DISCOUNTING BANKER
REDUCTION OF OVERDRAFT

Synn Lee & Co. Ltd. v. Bank of China

The decision of Hepworth J. in *Bank of China v. Synn Lee & Co. Ltd.*¹ has recently been affirmed by the Federation of Malaya Court of Appeal.²

The facts of this case were as follows. The defendants, Synn Lee & Co. Ltd., drew two cheques payable to Messrs. Heng Moh & Co. and crossed them "A/c Payee only". These cheques were sent by Heng Moh & Co. to their bankers, the plaintiffs. The plaintiffs presented the cheques for payment to the drawee bank. The cheques were dishonoured and the plaintiffs brought an action. They alleged that they had given value for the cheques and claimed to have become holders in due course. It was proved that the plaintiffs had, in fact, allowed Heng Moh & Co. an overdraft, before the clearance of the cheques, against a part of their sums. The balance was employed to reduce an existing overdraft given by the plaintiffs to Heng Moh & Co. This reduction, too, was given before clearance and in pursuance of an agreement between the plaintiffs and Heng Moh & Co.

Hepworth J. held that, by allowing a fresh overdraft and agreeing to reduce the existing one, before clearance, the plaintiffs gave value for the cheques and became holders. He, therefore, gave judgment for the plaintiffs.

The Court of Appeal approved of this reasoning. Hill J.A. said:³

It appears from the 1957 bank account that cheques paid in by Heng Moh & Co. were credited to their account immediately on receipt and prior to clearance. Hepworth J. considered this account in detail and he came to the conclusion, with which I respectfully agree, that though the 1957 accounts were more indicative of general overdraft facilities that did not in itself negative the existence of an agreement to give credit in respect of paid-in cheques before they were cleared. The important point as the learned trial Judge saw it was that there was an agreement to give credit before clearance and that it was immaterial whether credit was given by permitting drawing before clearance or by reduction of the overdraft before clearance.

The actual decision in the case, it should be said at once, is well founded. Since the plaintiffs allowed an overdraft against these cheques before their clearance, though not for the full amount of the cheques,⁴ they clearly became holders for value. A few words of caution should, at the same time, be added about the general rule suggested by the court. In the first place one should not give too much weight to the fact

1. (1962) 28 M.L.J. 91. See, *Holder in Due Course*, (note) by Lee Pang Lim in (1962) 4 Malaya L.R. 311.

2. *Synn Lee & Co. v. Bank of China* (1962) 28 M.L.J. 395.

3. (1962) 28 M.L.J. at p. 397. Thomson C.J. (at p. 396) and Good J.A. (at p. 397) concurred.

4. See section 27(1) of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61). Any consideration sufficient to support a simple contract constitutes good value for a bill. It is true that gross inadequacy might indicate a fraud (*Jones v. Gordon* (1887) 2 App. Cas. 616), but otherwise, even in the case of cheques, the courts do not inquire into the adequacy of a *bona fide* consideration: (*Jones v. Gordon*, *supra*, *Adib el Hinnawi v. Yacoub Falimi* [1936] 1 All. E.R. 638).

that the account of Heng Moh & Co. was credited before clearance. In the absence of an express agreement to give an overdraft, the fact that an account is credited with the amount of cheques before clearance does not render the collecting banker a holder of such cheques.⁵

Secondly, one should be careful about the finding that an agreement to reduce an existing overdraft is equal to an agreement to allow a fresh one. One should note that, in the present case, the overdraft was a revolving one.⁶ In such cases, by reducing the overdraft before clearance, the customer would, automatically, obtain a new overdraft. The reduction would, accordingly, be tantamount to an agreement to allow a fresh overdraft. The customer would, thus, clearly obtain consideration for the cheques.

If, on the other hand, the overdraft is a simple non-revolving one, it is difficult to see how the decision of the Court of Appeal can be applied. In such cases the customer does not, in fact, obtain credit through the reduction. If the cheques return dishonoured the bank, simply, re-debits the account of the customer. It follows that the customer does not obtain any benefit from the reduction-agreement. Neither does the banker sustain detriment. It further follows that, when the banker agrees to reduce a simple overdraft before clearance, he does not give consideration or value for the cheques.⁷ He cannot, therefore, be a holder for value or a holder in due course.

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5. See: *Underwood Ltd. v. Barclays Bank* [1924] 2 K.B. 775 *per* Atkin L.J. at 805; *Re Farrow's Bank Ltd.* [1923] 1 Ch. 41. *Cp.* Lee Pang Lim, *op cit.*, at p. 312.

6. This is clearly indicated by the fact that there was a standing agreement to provide overdraft facilities for Messrs. Heng Moh & Co. See at p. 397 of the decision of the Court of Appeal.

7. If the cheques are taken by the collecting bank in full satisfaction of the debt, there would of course be consideration. In the absence of express agreement a discounters is, however, regarded as taking bills of exchange in conditional payment only. See section 47(2) of the Bills of Exchange Act, 1882 and *M.A. Sassoon & Sons Ltd. v. International Banking Corporation* [1927] A.C. 711.