

Contract

Guarantee – Moneylending Agreement – Whether guarantee invalidated by the execution of the Second Settlement Agreement — Whether the action was premature

Mayland Lending Sdn Bhd v Rossmazati bt Mohamad & anor

[2014] AMEJ 0652, High Court

Facts The plaintiff, a licensed money lender, agreed to lend a sum of MYR10 million to Apac Sunrise subject to payment of interest and repayment of loan. However, Apac Sunrise failed to repay the loan within the stipulated date. Apac Sunrise proposed to settle the loan by offering shares to a company called Mayland Merit Sdn Bhd. This however was not agreed by the Plaintiff. A settlement was later reached (“the First Settlement Agreement”) whereby a Letter of Guarantee and Undertaking (“the Guarantee”) was executed. Apac Sunrise failed yet again to pay. Subsequently the plaintiff and a Malaysia Land Properties Sdn Bhd (related to the plaintiff and another creditor of Apac Sunrise) went to further negotiations and reached a further settlement (“the Second Settlement Agreement”). A written declaration was made by the second defendant, a director of Apac Sunrise, which expressly provides that the validity and enforceability of the Guarantee shall not be affected by the Second Settlement Agreement. The Plaintiff commenced a writ action.

Issues The issues before the High Court were (1) whether the Guarantee is invalidated by the execution of the Second Settlement Agreement; and (2) whether the action was premature.

Held In dismissing the plaintiff’s claim, the High Court held that clause 11 of the Second Settlement Agreement does not avoid or nullify the First Settlement Agreement as certain obligations under the First Settlement Agreement were instead varied and both the varied and non-varied obligations are subsumed in the Second Settlement Agreement. The Guarantee is also subject to the repayment terms as provided in clause 2 of the Second Settlement Agreement¹. It was also found that the plaintiff’s action against both the defendants pursuant to the Guarantee to be premature as the plaintiff’s cause of action has not yet accrued against the defendants as both guarantors and principal debtors of the obligations of Apac Sunrise under the Second Settlement Agreement at the date of the filing of the writ.

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¹ Repayment of Debt