

Contract

Moneylending transaction – Non-compliance with sections 3 and 4 of the Moneylenders Ordinance of Sarawak -- Whether such non-compliance rendered debt documents null and void – Whether appellant had right to apply for restitution order under section 66 of the Contracts Act 1950

Lo Ga Lung v Diong Ching Diung

[2014] 4 AMR 496, Court of Appeal

Facts The respondent filed an action to declare null and void a moneylending transaction (“the transaction”) between himself and the appellant/lender. The transaction which was entered into 20 years ago, was attested by one Teo Chong Lee, an advocate and solicitor. The declaration was sought on the basis that sections 3 and 4* of the Moneylenders Ordinance of Sarawak (“the Ordinance”) had been breached. The appellant, on the other hand, applied for an order of restitution under section 66 of the Contracts Act 1950 (“the Act”) on the basis that the respondent had been unjustly enriched at the appellant’s expense. The High Court decided in favour of the respondent. The appellant then appealed to the Court of Appeal.

Issues The issues before the Court of Appeal were (1) whether there was compliance with sections 3 and 4 of the Ordinance; (2) whether such non-compliance rendered the debt documents null and void; and (3) whether the appellant had a right to apply for a restitution order under section 66 of the Act.

Held The Court of Appeal ruled that the trial judge was correct in finding that there had been non-compliance of sections 3 and 4 of the Ordinance by the appellant since the phrase “officer of the court” does not include a practising advocate and solicitor. In spite of such non-compliance, the Court of Appeal allowed the appeal on the basis that the trial judge had misconstrued section 3 of the Ordinance to the extent that it had the effect of rendering the debt documents null and void when in actual fact, section 3 only had the limited effect of prohibiting admissibility of the impugned debt documents as evidence in court. Consequently, in the absence of any void documents, the appellant’s application for a restitution order under section 66 of the Act was not considered.

*Section 3 of the Ordinance requires the preparation of debt documents to be done or “made out” in court by the appropriate “officer of the court”. Section 4 of the Ordinance dictates that the physical transfer of money from the lender to the borrower must be witnessed by an “officer of the court”.