

HONG KONG / JUDGMENT

SECURITY ALLIANCE LTD v. KHAN MOHAMED FAROUK

COURT

Court of First Instance

DECIDED

12 July 2007

CASE / FILE NUMBER

HCA619/2006

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCA619/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO.619 OF 2006

BETWEEN SECURITY ALLIANCE LIMITED Plaintiff and KHAN MOHAMED FAROUK Defendant

Before : Hon Waung J in Court Dates of Hearing : 10 12 July 2007 Date of Judgment : 12 July 2007

J U D G M E N T

AUTONUMOUT This is the Trial of Action brought by the plaintiff against the defendant for the recovery of a debt of some \$1.5 million which, the plaintiff said, had been acknowledged by a document signed by the defendant dated 13 October 2005. This claim arose out of the relationship between the plaintiff, being the employer and the defendant being the general manager of the plaintiff company, which had lasted for some 24 years. AUTONUMOUT The defendant is of Pakistan origin although who had spent the later part of his life in Hong Kong and speaks fluent Cantonese and is married to a Chinese lady. AUTONUMOUT The defendant started working for the plaintiff at a young age and from the very bottom rung of the organisation. He started as a junior guard and rose steadily up in the organisation until he reached the position of general manager some nine years before his final departure in 2005. He was paid at the time when he left as general manager something like \$65,000 a month. He was an intelligent and hardworking person, and obviously worked his way up through his ability, good relationship with the company (especially with Mr Poon, the big boss of the plaintiff company) and through his ability to work well with the security guards of the plaintiff company. AUTONUMOUT The plaintiff's business was in security and it provided security guards as part of the services to the customers. By the

time the defendant left the organisation, the plaintiff had grown from something of under 100 staff to well over 300 staff and at least one-third of the guards were of Pakistan background. The defendant has a distinct advantage in working well with the Pakistan guards. AUTONUMOUT The fact that the defendant was of importance to the plaintiff business was well acknowledged both by Mr Poon in his oral evidence as well as by the behaviour of the parties, that is, a consistent pattern had clearly been shown in that the defendant was borrowing forward from the plaintiff and was obtaining large loans from the company to the extent that it showed a total debt of \$2 million odd by the time his employment was terminated. AUTONUMOUT The fact of the large debt owing by the defendant to the plaintiff played an important part in the critical transaction in October

2005. There are three critical dates in this case : 31 August 2005, 13 October 2005 and 30 November 2005. The three dates are critical because what happened was that at the end of 2004, the defendant was accused by the authority of having uttered documents in the record of the company in support of its business which were alleged to be false. Charges were brought against the defendant personally for dishonesty and he was convicted on 31 August 2005. AUTONUMOUT This conviction was of critical importance because as a result of the conviction he was not able to continue to be in charge of the operation of a security company, and this fact was of course well-known to everyone even before conviction. There was an agreement between the parties that the company was supportive of the legal defence and certainly to the extent that the costs of the defence was funded and paid by the plaintiff. There is documented evidence to show that the plaintiff paid something like over \$0.5 million for the costs of the defence up till the conviction. AUTONUMOUT What happened after conviction was therefore of great concern to both the plaintiff and the defendant. The plaintiff had to carry on its business but the defendant, upon conviction, could no longer be the general manager of the plaintiff company. So, ways were examined and of course the first means, that was agreed, was that there would be an appeal. An appeal was brought and there was evidence by the defendant that there was an oral promise by the company to support such appeal. AUTONUMOUT The question, however, was that what was going to happen in the interim, that is, before the appeal is successful, what would be the position of the defendant in working as general manager and ways were examined as to whether it was possible for him to continue. There was, unfortunately, by a clear letter of 29 September 2005 from the authorities that he could not continue his employment as a general manager pending appeal and this was in response to the letter from the plaintiff's solicitors asking if it was possible for the defendant to stay on until 31 October 2005 as per the resignation letter dated 20 September 2005. Shortly after, by early October 2005, a Mr Tse was taken on as an assistant manager with a view obviously to take over the position of running the company. AUTONUMOUT The matter must have progressed sufficiently between the plaintiff and the defendant to deal with the defendant's departure because it was recognised as a result of the 29 September 2005 letter from the authorities that he must leave the employment as a general manager well before 31 October 2005. The matter had progressed to the extent that arrangement therefore was

made for him to leave, and that happened on 13 October 2005. AUTONUMOUT A few critical documents had to be examined because they were all executed on 13 October 2005. It is the examination of these critical documents and having regard to the oral evidence given by the two witnesses at the trial, Mr Poon and the defendant, that the court has to reach a conclusion as to what really happened on 13 October 2005.

12. The issues in this case, said to be two, are :
 - (1) whether there was the existence of a debt in the sum claimed; and whether there was a waiver of the debt. Critically, the court has to examine on the second issue as to what really happened on 13 October 2005.
13. The documents that one has to look at can be seen at :
 - (1) page 76, Acknowledgement of Gratuity and Partial Repayment of Loan;
 - (2) page 77, Confirmation of Loans from Security Alliance Limited; and page 240/1, Acknowledgement of Long Service Payment; and
14. The key document is page 76 and I think it is worthwhile to read it in full In recognition of the contribution of Mr Khan Mohamed Farouk towards the Company s business over the past twenty-four years, the directors have decided to award Mr Khan Mohamed Farouk a gratuity of HK\$634,300.00. Mr Khan Mohamed Farouk agrees to use HK\$634,300.00 of this gratuity to reduce the loan of HK\$2,159,000.00 owed by him to the Company. The balance of the loan owed to the Company, after taking into account the aforesaid HK\$634,300.00 is now HK\$1,524,700.00. (Totals Hong Kong DOLLARS ONE MILLION FIVE HUNDRED TWENTY-FOUR THOUSAND AND SEVEN HUNDRED) [signed by Mr Poon of the plaintiff and the defendant] Date [13 October 2005 in chop] A separate document at page 77 shows that the defendant confirmed the amount of the loan outstanding as being \$1,524,700.
15. The way that figure was arrived at was clearly shown by looking at page 74 which is a running account between the plaintiff and the defendant as recorded by the plaintiff s accounts department. It bears many signatures of the defendant on that page. Basically, this running account shows the advances given by the plaintiff to the defendant and the repayment by the defendant to the plaintiff. What happened is really that every month, long before the salary is due to be paid, the defendant got some \$55,000 from the plaintiff, then at the end of the month when his salary was paid, \$65,000 was deducted, and therefore his loan, which at that time running over \$2 million, was slowly reduced. This was a part of a long pattern of transactions of running account between the parties, and it goes from page 89 to page 95, showing a period from 2000 up to the end of

2004. The running account shows that steadily and over a long period of time the defendant has been borrowing money from the plaintiff. These documents are to be supplemented by many audit confirmations signed by the defendant to auditors of the plaintiff confirming that he owed the company at a particular date certain sum of money. These documents together show that large sum was owing by the defendant to the plaintiff and as of 13 October 2005 that sum was running at over \$2.1 million.
16. The company decided that the way to deal with the defendant's departure was to give him a total of \$1 million. That \$1 million was made up of two sums :
- (1) \$365,700 being the defendant's entitlement under the law for his long service, payable by various cheques as stated at the bottom of page 240/1; and
- (2) the balance of \$634,300 as recorded at page 76 was a waiver or forgiveness of his debt of \$2.1 million odd. The balance, after taking into account of that forgiveness, is \$1,524,700. This is the sum being sued on by the plaintiff in this case.
17. The documents are of critical importance because they show clearly that the amount of the debt that was forgiven was only \$600,000 odd and not the whole of the \$2.1 million odd. The dispute in this case is really whether as a result of the discussion between the parties on 13 October 2005 the whole of that \$2.1 million odd was forgiven as opposed to merely \$600,000 odd. That is the critical defence raised.
18. But before I turn to that, I think I should just dispose of what was called the first issue. The first issue is whether there was the existence of the debt as alleged by the plaintiff.
19. Ms Wong, in her spirited and stubborn defence and submission, informed the court that the debt liability of the quantum is in dispute. I find that is wholly surprising. I said this because the case of the plaintiff for the establishment of the quantum of the debt is overwhelming. Overwhelming in the sense that there are contemporaneous documents, that is, the running account; there are the repeated audit confirmations; there is even the acknowledgement; the oral evidence of Mr Poon; the undoubted, continued nature of the transactions and, to a further extent, the oral evidence of Mr Poon in support of this. There was no credible contrary evidence against all this. The reality and truth is that there is this debt. There is really no basis for the court not to accept such evidence and do the perverse of rejecting that evidence and come to a conclusion of the quantum not being established. I find that such submission bizarre, to say the least.
20. Therefore, the central issue is whether there was the so-called Package which was put by Ms Wong at the final submission stage whereby it was alleged in return for the defendant agreeing to do various things (it was put under five Considerations), the plaintiff agreed to waive the \$2.1 million odd debt in total. The five Considerations were said to be :
- (1) Consideration : the signing of the Acknowledgement and Confirmation;

- (2) Consideration 2 : to continue to assist the plaintiff in its business until the appeal, that is, from 13 October 2005;
- (3) Consideration : to put up a show with Mr Poon for the plaintiff s staff and customers pretending that he had not left but was out of town for personal reasons; Consideration : not to contact the plaintiff s staff and customers directly during the appeal period until otherwise requested by the plaintiff; and Consideration : to come back to work for the plaintiff if his appeal succeeds.
21. Before I go on to consider in detail these Considerations and their impact on the existence of the so called waiver, let me say that it seems to me that we forget the first principle of contract law. The first principle is that all collateral evidence cannot go to contradict what is in the express term. There is a very clear express term on page 76, a waiver of \$600,000 odd. The case that is put up by the defendant is No, that s wrong. Instead of \$600,000 odd, it should be \$2.1 million. This contradicts an express term in the document. The fact that it was signed was not in any way disputed. It is not said this is signed because the defendant did not know what he was signing. But it was said this was signed as a result of a misrepresentation and therefore the document should not be allowed to stand. I find this submission difficult to accept.
22. But assuming I am wrong and assuming that document can be challenged, is there any substance in the challenge? So far as the 1st Consideration is concerned, it is common ground that he signed it, but again, it points to his signing it not for the \$2.1 million odd waiver but signing it for the \$600,000 odd waiver. However, the other 4 Considerations require analysis. I think Ms Wong recognised in the course of the final submission that none of those 4 Considerations had been pleaded and there is no explanation, let alone proper explanation as to why they were not pleaded. It is of critical importance the fact that they were not pleaded. Even though there was no serious objection to Ms Wong running these defences which were not pleaded, one must give very critical scrutiny to these defences when they had not been pleaded.
23. The heart of the defence or the package is really this. How would the plaintiff deal with the situation of the defendant being no longer able to work in the company and having therefore to make the unnecessary adjustment to the company being run by Mr Tse and with the defendant being out of the office, not being employed by the plaintiff for an uncertain period of time until his appeal is dealt with.
24. The case run at the trial by the defendant is that the defendant was asked to assist with the running of the company behind the scene in the sense of putting up a show so that it was not known to anyone else except Mr Poon that the defendant was there to assist but he was announced to be not in Hong Kong (Considerations 2 and 3) and that he would not get in touch with the staff and customers during that interim period (Consideration 4), and if the appeal was successful the defendant would come back to work (Consideration 5). This was said to be the package, and as I said, these they were not plead and therefore one has to cast

critical eye on it specially as this was a bizarre arrangement. One would have expected such bizarre arrangement to be at the forefront of the defence. What was however pleaded was only the misrepresentation, namely you do not need to worry about the signing of these documents at page 76 because it was only a formality. The 4 Considerations were not pleaded. So, I must have regard to this.

25. More than that, I must also have to regard to the reality of the value of what is said to be the 4 Considerations. If there is any assistance required, by the time of 13 October when Mr Tse was already in place for more than a week, it could only be of a limited extent, may be occasional telephone calls. If there is something that pops up suddenly and requires the former general manager to tell the new man what he needs to know in addition to what he has already been told Mr Tse after Mr Tse came on to the job. Since the defendant could not be really in contact seriously with customers or the staff because that would be illegal, there is hardly a substantial contribution that the defendant could be making to the plaintiff's business.
26. I have no doubt that Mr Khan has grossly exaggerated the value he has to the company for the interim period or for the arrangement that was made. I do not think that there was a kind of arrangement made which is now being advanced by Ms Wong on his behalf. I accept that Mr Poon's evidence is much more truthful and much more realistic. He, of course, did not dismiss the problem that could be caused if Mr Khan is unhelpful or is being difficult, and therefore to that extent, Mr Poon, if one examines very carefully his evidence, was very subtle in organising the affairs so that it is a rear guard action taken by the plaintiff to cater for the departure of the defendant and for the smooth transition from the old general manager to the new manager in the form of Mr Tse.
27. The subtlety of Mr Poon's evidence has to be examined critically because he was, both by the manner he gave his evidence and the words he used, always measured and careful. If I look at, for example, the way he had structured the payment of the \$300,000 odd the long-term service pay by way of post dated cheques, three post dated cheques each at the end of the months of October, November and December, it shows a careful mind at work to have still a hold over the defendant, by not giving him everything that was due to him. Mr Poon was not so generous, with these post-dated cheques. This is so that Mr Khan in the interim period would, I think, in the words of Mr Poon, not stir up the water .
28. I have no doubt that if one looks at the evidence of Mr Poon and Mr Khan, and having regard to the commercial reality, that the kind of arrangement that was suggested by the defendant was never made and certainly there was never any part of a package for a forgiveness of a \$2.1 million debt. The alleged package goes both against the text of the documents, the commercial reality and the oral evidence, the way I have accepted from Mr Poon. I therefore reject the defence of the defendant of this so-called forgiveness of the \$2.1 million debt.

29. It seems to me that what had really happened was that the plaintiff was hoping that the appeal may be successful, but the plaintiff was also, on the other hand, being realistic and had taken necessary steps to ensure that the company would go on carrying on its business as smoothly as possible by arranging for the departure of the defendant, giving him the package of \$1 million, but having put in place Mr Tse as the new management.
30. The next critical date is the success of the appeal. The appeal was successful on 13 November 2005. The next day, apparently there was a tea house meeting when it was made clear to Mr Khan that he was not coming back to work for the company. I think perhaps the writing was already on the wall even earlier when Mr Khan's appeal fees were not being funded by the plaintiff. It seems to me, most likely that by early November 2005, the plaintiff was on his way to having the company being run smoothly by Mr Tse and a decision was then made no longer to have Mr Khan back.
31. I can totally sympathize with Mr Khan's anger with Mr Poon. Anger, I think, is the correct word because in his evidence he clearly displayed not only his disappointment with what he felt was betrayal by Mr Poon, but also his anger with Mr Poon not giving him the support as he critically needed at the time. The reality however is that Mr Poon is a businessman. He had to have regard to the commercial reality of the company, and once the usefulness of Mr Khan to him or the company was over by his conviction, then his departure and subsequent take-over by Mr Tse inevitably led to Mr Khan being no longer needed.
32. I think the matter was compounded of course subsequently by Mr Khan setting up his own rival company and then operating it in the building next door. That just turns good friends into enemies, resulting in this piece of litigation which is unfortunate.
33. But having regard to all the materials put before me, I have no choice but come to the conclusion that the defence has not been made out. There is really highly credible written and oral evidence from the plaintiff to support its case. The finding of the court therefore is that there should be judgment to the plaintiff in the amount claimed plus interest thereon at 1% above prime from the time of the writ until judgment. Costs of the action is to the plaintiff. (William Waung) Judge of the Court of First Instance High Court Mr David Boyton, instructed by Messrs Littlewoods, for the Plaintiff Ms Linda S.H. Wong, instructed by Messrs Paul W. Tse, for the Defendant PAGE - PAGE A B C D E F G H I J K L M N 1udk 1udk !"(# & `#\$ "(#@ABB "@AB "(#@ABB 6^j@ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=57797

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/security-alliance-ltd-v-khan-mohamed-farouk-2007>

Prepared on 25 October 2026 · Esheria