IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Francis Richard De Zoysa
No. 125/6, Araliya Mawatha,
Attidiya, Dehiwala.
Plaintiff-Appellant

SC/CHC/APPEAL/18/2019
HC/CIVIL/322/2011/MR

Vs.

1. Mass Organization (Private) Limited,
   No. 4, Fairline Road, Dehiwala,
2. Mass Mohomed Edrif Weerabangsa,
   No. 4, Fairline Road, Dehiwala,
3. Mrs. Annabelle Weerabangsa,
   No. 4, Fairline Road, Dehiwala.

Defendant-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Sampath K.B. Wijeratne
Hon. Justice K.M.G.H. Kulatunga

Counsel: Thishya Weragoda with Yuwin Matugama and Patelee Doratiyawa for the Plaintiff-Appellant.

Atula Bandara Herath with Ama Karunarathna and Chamodi Sandunika for the 1st Defendant-Respondent.

Argued on: 26.03.2026

Written submissions:

by the 1st Defendant-Respondent on 14.02.2025 and 07.05.2026
by the Plaintiff-Appellant on 26.06.2025 and 02.06.2026

Decided on: 07.09.2026

Samayawardhena, J.

Factual matrix

The Plaintiff instituted this action in the Commercial High Court by plaint dated 22.07.2011 against the 1st Defendant Company and its directors, who were named as the 2nd and 3rd Defendants.

The Plaintiff's case, in brief, is that De Zoysa Organization (Private) Limited, of which he was the chairman, a shareholder and a director, entered into an agreement dated 18.08.2005 marked X1/P3 with the 1st Defendant Company for the transfer of its business portfolio. Under that agreement, the 1st Defendant Company undertook, *inter alia*, to discharge several liabilities of De Zoysa Organization (Private) Limited, including its liabilities in respect of Employment Provident Fund and Employment Trust Fund contributions, overdrafts and loan facilities obtained from Hatton National Bank, and outstanding lease rental payments due to Central Finance Company and Ceylinco Leasing Company. The Plaintiff alleged that the 1st Defendant Company had failed to discharge those liabilities in accordance with the agreement.

The Plaintiff accordingly sought, *inter alia*, a decree for the specific performance of the agreement marked X1, compelling the Defendants to discharge the liabilities undertaken by the 1st Defendant Company thereunder, or, in the alternative, to recover from the Defendants a sum of Rs. 29,523,340.20, being the aggregate amount of those liabilities.

The Defendants filed answer denying liability. They contended, *inter alia*, that the agreement marked X1 was not enforceable in law, that the Plaintiff had no right to claim any relief thereunder, and that the 2nd and 3rd Defendants could not be held personally liable under the agreement.

At the trial, the Plaintiff gave evidence and called four additional witnesses, namely, two officers of Hatton National Bank, a Labour Officer attached to the Labour Secretariat and the Registrar of the Magistrate's

Court of Mount Lavinia. The Plaintiff produced documents marked P1 to P53 in evidence. The Defendants did not call any witnesses but produced documents marked X and V1.

By judgment dated 07.12.2018, the learned Judge of the Commercial High Court dismissed the action, principally on the grounds that (a) the Plaintiff was not a party to the agreement marked X1 and therefore lacked the requisite standing to sue thereon; (b) the doctrine of privity of contract precluded the Plaintiff from enforcing X1, and the exception applicable to contracts made for the benefit of a third party did not apply; and (c) De Zoysa Organization (Private) Limited, which had entered into the agreement with the 1st Defendant Company, had been struck off the Register of Companies on 11.11.2009 and was therefore not in existence when the present action was instituted on 22.07.2011.

Aggrieved by that judgment, the Plaintiff has preferred this appeal.

The agreement marked X1 was entered into between De Zoysa Organization (Private) Limited and Mass Organization (Private) Limited. On that basis, the learned Judge of the Commercial High Court held that the Defendants had successfully established that the Plaintiff was not a party to the agreement. The Court observed that De Zoysa Organization (Private) Limited, being a limited liability company, was a legal entity distinct from its shareholders and directors. Accordingly, applying the doctrine of privity of contract, the Court concluded that the Plaintiff, not being a party to the agreement, was not entitled to maintain an action seeking its specific performance. The finding that the Plaintiff was not a party to X1 is not challenged before us.

The Court nevertheless recognised that the doctrine of privity of contract is not absolute and is subject to recognised exceptions. In particular, it referred to the Roman-Dutch law principle that a stipulation in a contract made for the benefit of a third party may, upon acceptance by that third party, be enforced by him notwithstanding that he was not a party to the contract. In support of that proposition, the learned Judge relied upon *Jinadasa v. Silva* (1932) 34 NLR 344. Learned Counsel for the Defendants also accepts that proposition of law in paragraph 6 of the post-argument written submissions filed before this Court. Nevertheless, the Commercial High Court held that the exception was inapplicable to the present case, being of the view that the agreement marked X1 did not confer an enforceable benefit upon the Plaintiff. It is on that basis the Plaintiff's action was dismissed with costs.

The doctrine of *stipulatio alteri*

There is no dispute that, as the learned Judge correctly observed, the agreement marked X1 was entered into between De Zoysa Organization (Private) Limited and the 1st Defendant Company. The general rule is that only the parties to a contract acquire rights and incur obligations under it. Consequently, a person who is not a party to the contract cannot ordinarily sue upon it. The learned Judge therefore held that the Plaintiff, not being a party to the agreement, was precluded by the doctrine of privity of contract from maintaining the present action.

That, however, is not the end of the inquiry. The doctrine of privity of contract is not absolute. Roman-Dutch law has long recognised an important exception in the form of a *stipulatio alteri*, namely, a stipulation made by contracting parties for the benefit of a third person. Upon acceptance of the benefit by the third party, the law recognises a direct legal relationship between the promisor and the third party, entitling the latter to enforce the stipulation.

The principle is succinctly explained by George Wille in *Principles of South African Law* (5th edition, Juta & Co. Ltd., 1961) at pages 342:

> *Contracts for the Benefit of a Third Person – A third person, that is, a person who is not an original party to a contract, can incur no liability under it, unless he accepts such liability later on.*

> *The same principle applies to the acquisition of rights under a contract by a third person, namely, that there must be an acceptance of the right by the third person. If, for instance, A and B make an agreement that B is to pay C a certain sum of money, C obtains no right under the contract until he accepts the stipulation made in his favour, for until then there is no vinculum juris between B and C. When, however, C accepts the stipulation, he acquires a vested right to claim the benefit, and he may sue B for it. It follows that C may in his own name claim specific performance against B, or an interdict to prevent threatened breach of contract, or damages for breach of contract as the case may be.*

The same principle is explained by Sir A.F.S. Maasdorp in *Maasdorp's Institutes of South African Law — Volume III: The Law of Contracts* (J.C. Juta & Co., 7th edition, 1961) at pages 37–38:

> *One person may, however, enter into a contract whereby it is stipulated that the third party becomes entitled to a benefit under it and the third person can, by notifying the promisor, accept the benefit and so become entitled to sue on the contract. It is through his acceptance that third party creates a legal obligation between himself and the promisor. The promisor cannot withdraw his promise before the third party has had reasonable time to accept but, if the third party has by that time not notified his acceptance, the contracting parties can by mutual consent cancel the contract and so terminate the third party's right to accept. If, however, the benefit comes to the knowledge of a third party only after the death of the contracting party who conferred it the acceptance by the third party when he learns of the benefit, is binding upon the remaining contracting party. The mere fact that a third party can derive a benefit from purporting to accept a term in a contract between other parties does not afford him any rights if the contracting parties had no intention of benefiting him. Just as contracting parties cannot compel a third party to accept a benefit, it stands to reason that they*

> *cannot bind him to perform any duty. Two parties can agree that one of them shall undertake to see that a third party shall do something for the benefit of the other, but that cannot possibly bind the third party. Should the third-party refuse to perform whatever was stipulated, the obligee can only recover damages for breach of contract by the obligor.*

Thus, under Roman-Dutch law, a third party derives no enforceable right merely because a contract confers a benefit upon him. What transforms the benefit into an enforceable right is the third party's acceptance of the stipulation. Upon such acceptance, a *vinculum juris*, or legally binding relationship, arises between the promisor and the third party, enabling the latter to enforce the stipulation directly.

The doctrine has long been recognised in Sri Lanka. In *Jinadasa v. Silva* (1932) 34 NLR 344, Garvin S.P.J., after reviewing the Roman-Dutch authorities, held that a stipulation in favour of a third party, once accepted by that third party, is enforceable at the instance of the third party. He observed that, notwithstanding differences of opinion among the Dutch jurists on certain aspects of the doctrine, they were unanimous that, upon acceptance, the third party acquires an enforceable right under the stipulation. Likewise, in *Marthelis Appuhamy v. Peiris* (1946) 47 NLR 78, Soertsz A.C.J. reaffirmed that a person for whose benefit a contractual promise is made may sue upon it under the Roman-Dutch law, notwithstanding that he was not an original party to the contract.

The Roman-Dutch law principles governing a *stipulatio alteri* have more recently been reaffirmed by the Supreme Court of Appeal of South Africa in *Eldacc (Pty) Ltd v. Bidvest Properties (Pty) Ltd* [2011] ZASCA 144. The Court recognised that, where a contract contains a *stipulatio alteri*, the third party may accept the benefit stipulated in its favour and, upon such acceptance, a direct legal relationship arises between the promisor and the third party. In reaching that conclusion, the Court referred to the earlier authorities, including *McCullogh v. Fernwood Estate Ltd* 1920 AD 204 and *Trever Investments (Pty) Ltd v. Friedhelm Investments (Pty) Ltd* 1982 (1) SA 7 (A).

In *Total South Africa (Pty) Ltd v. Bekker NO* 1992 (1) SA 617 (A), the Appellate Division of South Africa emphasised that mere fact that a contract confers a benefit upon a third party does not make it a *stipulatio alteri*. What is required is an intention on the part of the contracting parties that the third party should be entitled, by accepting the benefit, to become a party to the contractual relationship and acquire an enforceable right against the promisor. The decisive inquiry is therefore not merely whether the third party benefits from the contract, but whether, upon a proper construction of the agreement, the contracting parties intended to confer upon the third party a benefit capable of acceptance and direct enforcement.

Acceptance of the benefit need not necessarily take the form of an express declaration. It may be express or implied and, in an appropriate case, may be inferred from the conduct of the third party. In *Pam Golding Properties (Pty) Ltd v. Nkosi and Another* [2013] ZAGPJHC 245, the Court expressly recognised that acceptance of the benefit may be inferred from conduct. Similarly, in *Oosthuizen NO v. DJPB and Others* [2023] ZAGPPHC 30, the Court stated that acceptance may be express or implied and that, where the contract is beneficial, such as a donation, strong evidence of acceptance is not required. The question is whether the conduct relied upon, viewed objectively and in the context of the agreement, manifests an intention to accept the benefit conferred by the stipulation. Upon such acceptance, the third party acquires the enforceable right contemplated by the *stipulatio alteri.*

The applicability of the principle to the present case

The present case shall therefore be examined in the light of those principles.

The learned Judge identified the liabilities which the 1st Defendant Company undertook to discharge under the agreement marked X1, namely the EPF and ETF liabilities of De Zoysa Organization (Private) Limited, the overdrafts and loan facilities obtained from Hatton National Bank, and the outstanding lease rentals due to Central Finance Company and Ceylinco Leasing Company. The learned Judge found that the evidence did not enable the Court to distinguish which of those liabilities were liabilities of De Zoysa Organization (Private) Limited and which were liabilities personally owed by the Plaintiff. Having considered the evidence led at the trial, I am unable to disagree with that finding. In particular, the Plaintiff failed to establish that the liabilities arising from the bank facilities and lease agreements were liabilities of De Zoysa Organization (Private) Limited in respect of which he was entitled, in his personal capacity, to seek relief under the agreement. By X1, the 1st Defendant Company undertook to discharge the specified liabilities of De Zoysa Organization (Private) Limited. It did not thereby assume an obligation to discharge liabilities personally owed by the Plaintiff.

That, however, does not dispose of the matter. In my view, the learned Judge did not consider the concluding clause of the agreement X1 in its proper perspective. It provides:

> *It is hereby expressly agreed that all statutory and other liabilities of De Zoysa Organization whether past, present or future in respect of operations up to 31st August 2005 will be settled in full by Maas Organization (Pvt) Ltd and <u>Mr. F.R. De Zoysa [the Plaintiff] shall be absolved of all statutory and other liabilities pertaining to De Zoysa Organization whether past, present or future in respect of operations up to 31st August 2005</u>.*

This clause is of considerable significance. Although the agreement was entered into between De Zoysa Organization (Private) Limited and the 1st Defendant Company, the parties expressly stipulated that the Plaintiff himself would be absolved from all statutory and other liabilities pertaining to De Zoysa Organization up to 31.08.2005. Thus, the agreement did not merely regulate the rights and obligations of the contracting parties *inter se*. It also contained an express stipulation conferring a benefit upon the Plaintiff, who was not a party to the agreement.

In the present case, the Plaintiff was not a stranger to the transaction. He was the chairman of De Zoysa Organization (Private) Limited and executed the agreement marked X1 on its behalf. Both contracting parties were fully aware that, although the Plaintiff was not a contracting party in his personal capacity, the concluding clause of the agreement was inserted expressly for his benefit by providing that he should be absolved of all statutory and other liabilities pertaining to De Zoysa Organization. In those circumstances, the Plaintiff's execution of the agreement on behalf of De Zoysa Organisation is itself consistent with his acceptance of the benefit conferred upon him. In any event, his subsequent conduct places the matter beyond doubt.

By letters dated 31.08.2005 and 08.09.2005, marked P3(a) and P4(a) respectively, addressed to the Commissioner of Labour, the Plaintiff expressly informed the Commissioner that Maas Organization (Private) Limited had undertaken to assume the entire liability for the EPF, ETF and gratuity payments of De Zoysa Organization (Private) Limited and that he was to be absolved from all responsibility in respect of those statutory liabilities. In so doing, the Plaintiff unequivocally relied upon and adopted the benefit conferred upon him by the concluding clause of the agreement marked X1.

This conclusion is reinforced by the letter dated 08.09.2005, marked P5(a), by which the 2nd Defendant, acting on behalf of the 1st Defendant Company, confirmed to the Commissioner of Labour that the 1st Defendant Company had undertaken to absolve the Plaintiff from liability arising from the non-payment of those statutory dues. That contemporaneous correspondence leaves little room for doubt that both contracting parties proceeded on the footing that the stipulation in favour of the Plaintiff had been accepted and was intended to be acted upon.

The evidence establishes that a substantial part of the Plaintiff's claim relates to the statutory liabilities of De Zoysa Organisation, particularly the EPF and ETF liabilities amounting to Rs. 12,792,311.93. Although those liabilities were primarily liabilities of the company, section 40 of the Employees Provident Fund Act No. 15 of 1958, as amended, and Employees Trust Fund Act No. 46 of 1980, as amended, impose personal liability upon directors in the event of default and, in certain circumstances, expose them to criminal sanctions. By undertaking to discharge those statutory liabilities and expressly agreeing that the Plaintiff should be absolved therefrom, the 1st Defendant Company assumed an obligation intended not only to benefit De Zoysa Organization but also to protect the Plaintiff personally from the legal consequences of the company's default.

Accordingly, the benefit conferred upon the Plaintiff was neither incidental nor remote. It formed part of the express contractual undertaking undertaken by the parties. In my view, this brings the present case squarely within the recognised exception to the doctrine of privity of contract, namely that a stipulation made in favour of a third party may, upon acceptance, be enforced by that third party. To the extent that the learned Judge held otherwise, I am unable to agree.

The Plaintiff has sought to hold the 2nd and 3rd Defendants personally liable on the basis that they guaranteed the due performance of the obligations undertaken by the 1st Defendant Company under the agreement marked X1. I am unable to accept that contention. Although the 2nd Defendant has signed the agreement, he has done so expressly for and on behalf of the 1st Defendant Company and not in his personal capacity. The agreement contains no personal covenant or guarantee given by him. The 3rd Defendant is not even a signatory to the agreement.

In these circumstances, and having regard to the separate legal personality of the 1st Defendant Company, there is no legal basis upon which the obligations undertaken by the Company under the agreement may be enforced against the 2nd and 3rd Defendants personally. The action against the 2nd and 3rd Defendants shall therefore fail.

Conclusion

In the circumstances, the Plaintiff is entitled to enforce the agreement insofar as it relates to the statutory liabilities amounting to Rs. 12,792,311.93. The judgment of the Commercial High Court is set aside to that extent, and the 1st Defendant Company shall pay the Plaintiff the said sum of Rs. 12,792,311.93, together with legal interest thereon from the date of institution of the action until payment in full. The Plaintiff is also entitled to taxed costs in the Commercial High Court and in this Court.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.
I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.
I agree.

Judge of the Supreme Court