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

Lanka Orix Leasing Company PLC,
100/1, Sri Jayawardenapura
Mawatha,
Rajagiriya

Plaintiff

SC CHC Appeal No: 02/2021
HC (Civil) 381/206/MR

Vs.

1. Oslo Marketing (Private) Limited,
   Welagane, Maspotha,
   Kurunegala

2. Oslo Furniture Industries (Private) Limited,
   Welagane, Maspotha,
   Kurunegala

3. Mutathissa Brahammana Panditha
   Wasala Mudiyanselage Ralahamilage
   Ramya Yohani Kossgolla,
   No. 28/114,
   3rd Lane,
   Sumangala Mawatha,
   Kurunegala.

4. Gamage Chaminda Janitha
   Karunarathne
   No. 28/114,

3rd Lane,
Sumangala Mawatha,
Kurunegala.

Defendants

AND NOW BETWEEN

1. Oslo Marketing (Private) Limited,
   Welagane, Maspotha,
   Kurunegala

2. Oslo Furniture Industries (Private) Limited,
   Welagane, Maspotha,
   Kurunegala

3. Mutathissa Brahammana Panditha Wasala Mudiyanselage Ralahamilage Ramya Yohani Kossgolla,
   No. 28/114,
   3rd Lane,
   Sumangala Mawatha,
   Kurunegala.

4. Gamage Chaminda Janitha Karunarathne
   No. 28/114,
   3rd Lane,
   Sumangala Mawatha,
   Kurunegala.

Defendant-Appellants

Vs.

Lanka Orix Leasing Company PLC,
100/1, Sri Jayawardenapura Mawatha,
Rajagiriya

Plaintiff-Respondent

Before: **Justice A. L. Shiran Gooneratne**
Justice K. Priyantha Fernando
Justice Menaka Wijesundera

Counsel: **Defendant-Appellants** are absent and unrepresented.

Hiran de Alwis with Kisal Gunerathne instructed by Mrs. Sithumini Wijayarathne for the **Plaintiff-Respondent.**

Argued on: 13/10/2025

Decided on: 18/12/2025

A.L. Shiran Gooneratne J.

1. The Factual Background

By Plaint dated 24/08/2016, the Plaintiff–Respondent, Lanka Orix Leasing Company PLC (hereinafter referred to as the "Plaintiff"), instituted action before the Commercial High Court of Colombo seeking to recover a sum of Rupees Twenty-One Million Six Hundred Sixty-Four Thousand Eight Hundred and

Eleven and Cents Ninety-Nine (Rs. 21,664,811.99), together with interest from 01/09/2014, from the 1st to 4th Defendants.

The Plaintiff pleads that at the request of the 1st Defendant, Oslo Marketing (Pvt) Ltd, a Factoring Agreement (Recourse) dated 12/01/2009 was entered into between the Plaintiff and the said 1st Defendant. A true copy of the Agreement is marked "B". Under the terms of this Agreement, the 1st Defendant agreed to offer to the Plaintiff all debts owed to it. The Plaintiff was granted full authority to collect and enforce payment of such debts. It was expressly agreed that the Plaintiff would have complete recourse to the 1st Defendant for any debts remaining unpaid by the due date.

The 1st Defendant thereafter commenced operating the facility and, acting under the Agreement, sold its debts to the Plaintiff. At the request of the 1st Defendant, the facility was divided into two components, one relating to steel furniture invoices and the other to sofa invoices. The Plaintiff states that upon accepting the said invoices, it advanced 80% of the invoice value to the 1st Defendant. According to the certified Statement of Account, the Plaintiff advanced Rs. 1,192,950.65 under steel invoices and Rs. 20,471,861.34 under sofa invoices.

The Plaintiff has pleaded that since the debtors of the 1st Defendant failed and neglected to honor the invoices assigned under the factoring facility, the debt was recourse to the 1st Defendant in accordance with the Agreement. As at 31/08/2014, the total outstanding balance due from the 1st Defendant amounted to Rs. 21,664,811.99.

The Plaintiff has further averred that by letters of demand dated 17/12/2015, the Plaintiff demanded payment of the total outstanding sum from the 1st to 4th Defendants, and that the Defendants failed to respond or make any payment.

In their joint Answer dated 07/04/2017, the Defendants denied the Plaintiff's claim. They contended, inter alia, that the Factoring Agreement was signed in Kurunegala, that it had not been properly completed at the time of signing, that

the Plaintiff failed to notify the Defendants of debtor defaults or take steps to recover outstanding payments from the debtors, and that the invoices were not returned back to the Defendant. The Defendants also stated that the interest charged was excessive and amounted to unjust enrichment.

Upon commencement of trial on 23/01/2018, the Plaintiff raised fourteen issues and led the evidence of its Assistant Manager (Credit Control), Kapugamage Saman, and produced documents marked P1 to P12. The 4th Defendant testified on behalf of all Defendants but did not produce any documents in evidence.

In addition to the admission of the corporate status of the parties, three admissions were recorded as follows;

1. that signatures were placed on the Factoring Agreement and guarantees by the defendants.

2. that the 1st Defendant has sold its debts to the Plaintiff, and the Plaintiff had advanced the money to the 1st Defendant.

3. that 80% of the value of the invoices was advanced to the Defendant by the Plaintiff.

By Judgment dated 22/05/2020, the learned High Court Judge held that the Plaintiff had established its claim on a balance of probability and entered judgment in favor of the Plaintiff for the sum of Rs. 21,664,811.99, with legal interest from the date of the decree until payment in full.

The Defendants thereafter lodged a Petition of Appeal dated 15/07/2020 challenging the judgment on the basis that the Judge wrongly accepted all documents marked P1–P12 as proven, without properly considering that several of them were only marked subject to proof. They further contend that the Plaintiff failed to produce unpaid invoices and did not return those invoices to the 1st Defendant as agreed. The Appellants also state that certain clauses in the Factoring Agreement were unreasonable or against public policy, and that the

Judge failed to recognize that the Plaintiff was attempting to unjustly enrich itself at their expense.

2. Analysis

At the outset, it is observed that the parties have expressly admitted the execution of the Factoring Agreement dated 12/01/2009, together with the Guarantee Bonds signed by the 2nd to 4th Defendants. The admissions in the High Court proceedings confirm that the Defendants placed their signatures upon the documents marked "B", "E", "F", and "G", comprising the Factoring Agreement and the respective guarantees. The 1st Defendant has further admitted that it sold its debts to the Plaintiff and accepted 80% of the invoice value as an advance payment under the terms of the Agreement.

It is also material to note that the Defendants led evidence only of a single witness, namely the 4th Defendant, who is a director of the Defendant companies and the husband of the 3rd Defendant. In his oral testimony, the 4th Defendant clearly admitted that the Defendants had signed the Factoring Agreement and the corresponding Guarantee Bonds.

The Defendants have taken up a blanket objection that certain provisions of the Factoring Agreement are contrary to public policy. They have not identified any impugned clause, nor have they explained in what manner any such clause is said to offend public policy. In any event, it is common ground that the Defendants, having had the opportunity to consider the document, chose to sign the Agreement and the Guarantee Bonds, and assumed the obligations contained in them.

In ***Esso Petroleum Company Limited v Harper's Garage (Stourport) Limited*** **[1967] 1 All ER 699,** Lord Pearce held that,

"It is important that in weighing the question of reasonableness, should give full weight to commercial practices and to the generality of contracts made freely by parties bargaining on equal terms."

And as Lord Wilberforce held in the same case,

"The development of the law does not seem to show, however, that judges have been able to dispense from the necessity of justification under a public policy test of reasonableness such contracts or provisions of the contracts as, under contemporary conditions, may be found to have passed into the accepted and normal currency of commercial or contractual or conveyancing relations. That such contracts have done so may be taken to show with at least strong prima force that, molded under the pressures of negotiation, competition, and public opinion, they have assumed a form which satisfies the test of public policy as understood by the courts at the time, or, regarding the matters from the point of view of the trade, that the trade in question has assumed such a form, that for its health or expansion it requires a degree of regulation."

Seen in that light, a party that alleges that a commercial contract is contrary to public policy must at least identify the specific clause complained of and demonstrate how its object or effect offends the public interest as recognized by law. The mere fact that an agreement is commercially advantageous to one party and disadvantageous to the other does not, by itself, make it unlawful, especially if the disadvantaged party was free to refuse the bargain and not sign it. Having examined the Factoring Agreement placed before this Court and bearing in mind its character as a standard commercial factoring agreement, I am unable to identify any provision that can properly be described as contrary to public policy in the sense discussed above.

I also wish to draw attention to the case of ***Nimalasena vs. L.B. Finance Company Ltd and others*** **[C.A. Case No. 831/2000 (F) decided on 06/02/2017],** where A. H. M. D. Nawaz J. has held as follows:

"I also find that the 2nd defendant appellant was a technician and a tradesman on his own admission. The witness came through as a man of the world who could not have been so naive as to be unaware of the implications of placing one's signature to a guarantee. If he knew that the act of signing a guarantee would spell for him disastrous consequences of monetary burdens, he should have exhibited prudence. So, his assertion that he only signed as a witness and not as a guarantor does not inspire confidence in this Court."

Accordingly, the Defendants in the present case, who are corporate entities and directors and who have admittedly signed the Factoring Agreement and the Guarantee Bonds and benefited from the advances made under them, cannot avoid the legal consequences of those documents by resorting to an undefined and unsupported allegation of public policy or by suggesting that they did not appreciate what they were signing.

The defendants have not taken any plea that the signatures were procured by fraud, misrepresentation, or mistake. Therefore, the Agreement stands validly executed and binding upon the parties.

The Defendants contend that the Plaintiff failed to produce the unpaid invoices and did not return those invoices to the 1st Defendant as required. However, a perusal of the agreement in question indicates that under the terms of recourse, no clause obligates the Plaintiff to return unpaid invoices to the Client merely because the relevant debts have not been collected. Therefore, I see no merit in the said argument.

The Defendants have also raised an issue of unjust enrichment, alleging that the Plaintiff is attempting to unjustly enrich itself by instituting this action. In ***Premier Marketing Ltd v Seylan Bank PLC*** **[SC (CHC) 05/2009, decided on 22/03/2019]** Dehideniya J. cites ***Banque Financiere de la Cite v. Parc (Battersea) Ltd*** **[(1999) AC 221, 227, HL]** with approval, as follows:

"…Lord Steyn held that a Plaintiff must show three things to make a claim under the ground of unjust enrichment.

1) *The Defendant has been enriched.*
2) *The enrichment has been gained at the Plaintiff's expense.*
3) *The circumstances of the enrichment are such that, it would be unjust to let the Defendant keep the benefit."*

Accordingly, to prove unjust enrichment, the Defendant first needs to establish that the Plaintiff has been enriched at the expense of the Defendant. The claim of the Plaintiff in this case is based on a written and admitted Factoring Agreement and Guarantee Bonds, which the Defendants freely executed. Under the terms of that Agreement, the Plaintiff advanced funds to the 1st Defendant amounting to 80% of the invoice value, and the Defendants expressly undertook to repay any sums that remained unpaid by the debtors. The Plaintiff's entitlement to recover those sums arises directly from the contractual provisions.

According to the documentary evidence placed before this Court, there is no indication that any debtor of the 1st Defendant made payments to the Plaintiff. The Plaintiff's witness has categorically stated that the customers of the 1st Defendant failed and neglected to honor the invoices under the factoring facility, and this evidence has not been contradicted. The Defendants, for their part, have produced no documentary or oral evidence to demonstrate that any debtor made any payment, nor have they provided any material suggesting that the Plaintiff recovered monies from any source other than recourse to the 1st Defendant under the terms of the Agreement. In these circumstances, the complaint of unjust enrichment is entirely unfounded. The Defendants have failed to explain how, in the absence of debtor payments, the Plaintiff is said to have been enriched, let alone unjustly enriched, by instituting this action.

In all the above circumstances, I answer questions of law raised by the Defendant-Appellant in the negative and affirm the Judgement of the Commercial High Court dated 22/05/2020.

Accordingly, this Appeal is dismissed subject to costs fixed at Rs. 300,000/-

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree

Judge of the Supreme Court