Singapore Court of Appeal Clarifies Requirements on Execution of Deeds

The Singapore Court of Appeal has affirmed that sealing remains a key requisite for the execution of a deed, which is valid by being "signed, sealed and delivered": *Lim Zhipeng v Seow Suat Thin and another matter* [2020] SGCA 89 ("***Lim Zhipeng***").

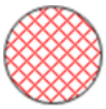
Our Comments

Lim Zhipeng is significant as the Court of Appeal has clarified that sealing remains a crucial requirement for construing that a deed has been validly executed, and notwithstanding developments in the common law that have expanded the scenarios under which a document has been proved to be executed under seal, the court will look beyond the words of the document referring to it as having been sealed.

While a seal may not need to take the form of wax (as was historically used) or the circular wafer seal commonly used nowadays, the Court of Appeal has held that there must be evidence of a party's intention in sealing the document beyond using in the document the words "executed as a deed" and the parties' signing next to the words "signed, sealed and delivered".

In *Lim Zhipeng*, the Court of Appeal explored cases where the requirement of sealing was satisfied by green ribbon attached to a document evidencing where a physical seal should have been together with certificates certifying the document was a deed and a printed circle with the letters 'L.S.' within it countersigned by the executing party, which evidenced parties' intention to seal the document they were signing. In the modern day, a physical manifestation of a seal could be represented by an electronic red seal similar to the circular wafer seal commonly stuck onto documents to meet the requirements of sealing. In fact, as the Court of Appeal has recognised the practical reality that such wafer seals may not be durable ([28] of *Lim Zhipeng*), it may be prudent to combine a separate physical mark of sealing together with an electronic mark (i.e., the wafer seal to be stuck over an electronic red seal).

Example:



This update examines the Court of Appeal's decision in *Lim Zhipeng*.

Background

In or around December 2016, the appellant ("**Creditor**") advanced a loan of $565,000 ("**Debt**") to one Cheong Wee Ker Derek ("**Debtor**"), with whom the Creditor had been acquainted for more than 20 years. The Debtor failed to make scheduled repayments and was in May 2017 the subject of bankruptcy proceedings initiated by an institutional creditor. The Debtor wanted to annul the bankruptcy order and was advised that annulment would be possible should all his creditors agreed to it. At that point, the Creditor had, on the Debtor's failure to repay the Debt, been frequently pressing the Debtor for repayment.

The Debtor's mother ("**Guarantor**", and defendant in this case) subsequently agreed to act as guarantor for the Debt. In September 2017, the Creditor gave the Guarantor a document entitled "Deed of Guarantee"

("**Guarantee**") to execute before a witness. Under the Guarantee, if the Debtor continued to default on payment, the Guarantor was to repay the outstanding sum of $490,000 to the Creditor derived from the sale proceeds of two of the Guarantor's properties, in addition to monthly instalments, until full repayment was satisfied. The Guarantee identified itself as a "deed" and the execution pages carried the words "signed, sealed and delivered" by the parties. The Guarantor took the Guarantee to a lawyer, who read and translated the document into Mandarin for her, and duly witnessed the Guarantor's signing of the Guarantee. No physical seal was appended.

In April 2018, after the Guarantor had paid the Creditor $40,000 and defaulted on the rest of the sums due and owing, the Creditor sued the Guarantor in the High Court claiming the immediate repayment of all outstanding sums. The Creditor applied for summary judgment and the assistant registrar entered judgment for the Creditor in the sum of $438,500. The Guarantor appealed against the summary judgment before the High Court.

The High Court's Decision

The summary judgment was set aside by the High Court judge, who entirely dismissed the Creditor's claim and allowed the Guarantor's counterclaim for repayment of the $40,000 she had paid to the Creditor.

The High Court judge then deemed the Guarantee unenforceable as a deed as it had not been sealed, and further, on the basis that the Guarantee was not a deed, that consideration had not been adequately pleaded in the statement of claim filed by the Creditor and that the type of consideration given was not clear.

Based on these findings, the High Court judge was of the view that the Creditor, unjustly enriched of the $40,000 paid by the Guarantor, should return the sum to the Guarantor under the latter party's counterclaim. The Creditor then filed an appeal to the Court of Appeal, submitting that the lack of a seal is not fatal to the Guarantee being enforceable as a deed owing to both parties' intention of executing it as a deed.

The Court of Appeal's Decision

In making its decision, the Court of Appeal narrowed in on whether the Guarantee may be deemed to have been "sealed" notwithstanding the lack of a physical manifestation of a seal and therefore met the requirement that deeds must be "signed, sealed and delivered" to have been validly executed.

Firstly, the Court of Appeal considered English case law in which the documents in question were held to be deeds notwithstanding their lack of a physical impression or manifestation of a seal. Instead, there were replacement indicators in the places where the physical seals should have been. In the earlier English case of *Re Sarah Jane Sandilands and others* [1871] LR 6 CP 411, these were pieces of green ribbon, and in *First National Securities Ltd v Jones and another* [1978] Ch 109 ("***First National***"), the defendant had simply signed across a circle containing the letters "L.S." (at [29]-[34]). The documents in question each also contained an attestation clause in proper form declaring that the deed was "signed, sealed and delivered" by the parties.

The Court of Appeal then drew attention to legislative amendments in both the UK and Singapore to abolish the requirement of sealing for the execution of deeds in various situations. For example, in the UK, legislation was enacted in 1989 to abolish the requirement in respect of deeds executed by an individual. Conversely in Singapore, the Companies Act was amended such that Singapore-incorporated companies no longer needed to use common seals in executing deeds (at [35]-[36]).

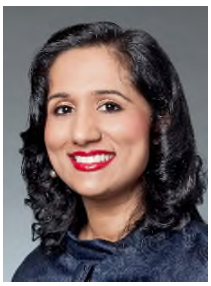
Nonetheless, the Court of Appeal emphasised that the retention of the phrase "signed, *sealed* and delivered" (emphasis ours) is evidence that sealing remains a necessary requirement at common law. Authorities like

First National remain instructive in determining if the sealing requirement has been satisfied. In such cases, the clear intention of the parties to execute a deed is sufficient, notwithstanding the absence of a physical seal (at [37]-[38]).

In the present case, however, the Court of Appeal could find no evidence that the parties intended for the Guarantee to be executed as a deed, beyond the document identifying itself as a "deed" and containing a similar "signed, sealed and delivered" attestation clause. Crucially, it did not appear as if the Guarantor knew of the sealing requirement or was told of it by the lawyer she had sought advice from. Other than the words of the Guarantee itself, there was nothing to indicate that something amounting to sealing took place and to hold in the affirmative would be "extending the legal fiction too far" (at [41]-[44]). Due to the lack of evidence that the parties had intended to execute the Guarantee as a deed, it was ultimately held that the Guarantee was not executed as a deed.

Notwithstanding the holding, the Court of Appeal highlighted how the Creditor could have succeeded in blocking the Guarantor's denial that the Guarantee was intended to be a deed if he had pleaded estoppel (at [45]). This was because the Guarantor had executed the Guarantee, in so doing making a representation that the document was a deed and that it has been "signed, *sealed* and delivered" (emphasis ours), knowing that the Creditor would rely on such a representation. The Creditor did so to his detriment by refraining from pursuing the Debtor for payment or from filing a proof of debt against him. Unfortunately, estoppel was not pleaded and thus could not be relied upon by the Creditor.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally deal with or the following Partner:



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