1966
*Nov. 3
Nov. 25

JACK GOLLNER (*Defendant*) ..... APPELLANT;

AND

LAURENTIDE FINANCIAL CORPORATION LTD. (*Plaintiff*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Guarantee—Promissory notes—Whether notes covered by guarantee—Knowledge of guarantor as to intent of guarantee.

In an action involving six promissory notes, the respondent company, which claimed against the appellant as guarantor, was awarded judgment for $19,844.99. An appeal to the Court of Appeal for British Columbia having been dismissed, a further appeal was brought to this Court. At the conclusion of the argument for the appellant, the Court stated that reply was required in reference only to the appellant's sixth submission which appeared in his factum in these words: "That alternatively if the guarantee is held to be valid that the promissory notes as transactions inter partes which are the subject of this action were not promissory notes contemplated by the guarantee." The trial judge had found that when the appellant executed the guarantee he knew that it covered the repayment of moneys advanced or credited by the respondent for new and used wholesale financing. The Court of Appeal supported that finding.

Held: The appeal should be dismissed.

Whether the word "purchased" or the word "discounted" applied to the promissory notes in question, the phrase in the guarantee "of any and all notes, bills of exchange, agreements, contracts or acceptances now held or which may hereafter be purchased or discounted by the corporation" was broad enough to cover the said promissory notes and in the light of the concurrent findings of fact of the Courts below it was intended to cover the said notes.

APPEAL from the judgment of the Court of Appeal for British Columbia, dismissing an appeal from a judgment of Hutcheson J. Appeal dismissed.

F. G. P. Lewis, for the defendant, appellant.

G. T. Guest, for the plaintiff, respondent.

The judgment of the Court was delivered by

SPENCE J.:—This is an appeal from the judgment of the Court of Appeal for British Columbia which dismissed with costs an appeal from the judgment of Hutcheson J. whereby he awarded the plaintiff the sum of $19,844.99 plus

*PRESENT: Cartwright, Abbott, Martland, Ritchie and Spence JJ.

costs. That amount was the total due on six promissory notes made by Steveston Motors Limited in favour of Imperial Investment Corporation Limited. The latter has now become the respondent Laurentide Financial Corporation Limited which claimed against the appellant as guarantor.

After presentation of the argument by counsel for the appellant, the Court informed counsel for the respondent that reply was required in reference only to the sixth submission of the appellant. That submission appeared in the appellant's factum in these words:

> That alternatively if the guarantee is held to be valid that the promissory notes as transactions inter partes which are the subject of this action were not promissory notes contemplated by the guarantee.

The guarantee upon which the plaintiff (here respondent) based its claim was one under date of November 19, 1956. The material part of the guarantee reads as follows:

> In consideration of the purchase or discount of any note, bill of exchange, agreement, contract or acceptance bearing the signature in any capacity of Steveston Motors Ltd. of Steveston, B.C., hereinafter called the Dealer by the Imperial Investment Corporation Ltd., hereinafter called the Corporation, the undersigned do hereby jointly and severally unconditionally guarantee to the Corporation the payment at maturity or whenever by the terms of said note, bill of exchange, agreement, contract or acceptance, the same shall become or be declared to be due, *of any and all notes, bills of exchange, agreements, contracts or acceptances, now held or which may hereafter be purchased or discounted by the Corporation*, on which the Dealer is or may become liable as maker, drawer, acceptor, indorser, signatory or guarantor...

(The italics are my own.)

The learned trial judge made a specific finding of fact: "I find that when the defendant executed the guarantee sued upon he knew that it covered the repayment of moneys advanced or credited by the plaintiff for new and used wholesale financing."

Davey J.A., in giving the judgment for the Court of Appeal for British Columbia, said:

> The learned trial judge found appellant knew when he signed the document that it was a guarantee of the dealer's obligations for wholesale financing.... I am unable to say the learned Judge was wrong and this ground of appeal fails.

Therefore, we have concurrent findings of fact that the guarantee was intended to cover new and used wholesale financing. As Davey J.A. points out in his reasons for

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judgment for the Court of Appeal for British Columbia, "used wholesale financing, which the guarantee was intended to cover, consisted principally of money loaned directly to the dealer and the word 'discount' was undoubtedly intended to apply to that type of transaction."

On full consideration of the matter, we have come to the conclusion that whether the word "purchased" or the word "discounted" applied to these promissory notes of Stevesston Motors Limited, the phrase "of any and all notes, bills of exchange, agreements, contracts or acceptances now held or which may hereafter be purchased or discounted by the corporation" is broad enough to cover the said promissory notes and in the light of the concurrent findings of fact made by the Courts below upon the circumstances outlined in the evidence it was intended to cover the said promissory notes.

The appeal will be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Griffiths, McLelland & Co., Vancouver.

Solicitors for the plaintiff, respondent: Robson, Macdonald & Guest, Vancouver.