

Standard Chartered Bank v Uniden Systems (S) Pte Ltd and Others
[2003] SGHC 98

Case Number : Suit 283/2002
Decision Date : 28 April 2003
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Dylan Lee (Shook Lin & Bok) for the plaintiffs; Choo Wai Han (the third defendant) in person
Parties : Standard Chartered Bank — Uniden Systems (S) Pte Ltd; Leslie Tan Le Se; Choo Wai Han (m.w.)

Contract – Mistake – Non est factum – Whether guarantor knew she was signing guarantee

Contract – Undue influence – Notice of undue influence – Wife signing guarantee in favour of bank to secure banking facilities for husband's business – Wife alleging she signed guarantee under husband's undue influence – Whether bank had actual or constructive notice of undue influence – Whether there was anything to warrant bank to conduct further investigations

Contract – Undue influence – Presumed – Husband-wife relationship – Wife lacked independent advice when she signed guarantee in favour of bank to secure banking facilities for husband's business – Whether wife would have signed guarantee if she had been advised of risks involved

Legal Profession – Conflict of interest – Professional conduct – Solicitor acting for both mortgagor and mortgagee in loan transaction – Whether solicitor in conflict of interest

The facts

1 Standard Chartered Bank (the Bank) is a bank which carries on business in Singapore at No. 6 Battery Road #07-00, Singapore 049909 (the main branch) and elsewhere. Uniden Systems (S) Pte Ltd (the company) the first defendant, was at the material time, a customer of the Bank. Leslie Tan Le Se (Tan) the second defendant was at the material time, the managing-director of the company. Choo Wai Han (Choo) the third defendant, was also a director of the company at the material time and is the wife of Tan. The parties (who were married on 16 March 1973) are separated (since 1998) pending divorce proceedings, due to Tan's involvement with another woman. They have one child, a daughter born in September 1987.

2 Before Tan started the company, he had a sole-proprietorship called Uniden Systems (Uniden) which he registered on 14 May 1985, and which he subsequently converted into a partnership (in January 1994) with Choo as his partner. The partnership was in turn converted into the company on 6 September 1995 with Tan and Choo as directors and shareholders each holding 50% of the shares. The conversion exercise was carried out by Uniden's accountants NSC Management Services. The company used to deal in automotive air-conditioning compressors and other components and systems and, during its heyday, it had markets overseas in particular the Middle East, Pakistan, India, Europe and East/South East Asia.

3 After an introduction in 1995 by a third party to the Bank's then relationship manager Lim Eng Bock (Lim) at the main branch, Tan applied to the Bank for trade financing facilities first for the partnership of Uniden and then, for the company. The Bank by its letter of offer dated 18 August 1995 (the letter of offer) offered various facilities (including overdraft) to the company. The letter of offer was subject to the Bank's Standard Terms and Conditions and inter alia, required the company's directors to execute joint and several guarantees as well as an all monies legal mortgage over the property

known as No. 5 Tosca Street (the property) which was then the matrimonial home of the couple. By a resolution dated 18 September 1995 passed and signed by Tan and Choo, the company accepted the letter of offer.

4 The Bank instructed their solicitors (the law firm) to act for them in the mortgage documentation and the guarantees, so did the company. The solicitor of the law firm who prepared the documents was Ms Woon. However, when Tan and Choo visited the law firm's office on or about 12 September 1995 to sign the mortgage and guarantee, they were attended to by one another solicitor (N) and not Ms Woon, as the latter was then not in the office. The mortgage and guarantee were both dated 3 January 1996. After the loan documentation had been completed and the mortgage registered, the Bank extended overdraft and other facilities (including trust receipts) to the company. Besides the Bank, the company had facilities granted by other banks, including DBS.

5 The company's business boomed in the 1980s. When the company's business prospered, so did the couple. Tan purchased a condominium (at Astrid Meadows), two office units for the company as well as the property in or about 1992, as well as a motor-vehicle (BMW make) for Choo's use.

6 During those prosperous times, Tan used to travel frequently. Whenever he was out of Singapore, Choo would sign documents (including bank documents) for and on behalf of the company and would visit the company's office for that purpose. However, Tan kept in constant touch with the company's office by telephone during those trips and would give instructions to his staff, and even draft/dictate letters for signature by Choo. The company's business unfortunately faltered in or about 1998 after the Asian financial crisis, and subsequently failed; Tan claimed he was cheated by a joint venture partner.

7 There were two (2) subsequent letters of offer from the Bank to the company after the letter of offer, one was dated 7 October 1999 (the second letter of offer) while the third was dated 23 November 1999 (the third letter of offer). The third letter of offer revised the company's facilities; the company agreed thereunder to commence repaying the Bank's five (5) year term loan by 30 November 1999. The company defaulted on its obligations in July 2000 and after the Bank's solicitors had made the requisite demand of the two (2) guarantors (Tan and Choo) by a letter dated 27 April 2001 (the letter of demand) of the various sums then owed under the facilities, these proceedings were eventually commenced (on 15 March 2002) against all three (3) parties.

The pleadings

8 In the statement of claim, the Bank referred not to the letter of offer but to the second and third letters of offer but, did refer to the guarantee. The second and third letters of offer are not be found in the agreed bundle of documents tendered to the court (AB1-159) or in the affidavits of evidence of the Bank's witnesses; for that matter, neither can the letter of demand. The documents formed part of the exhibits to the affidavit of the Bank's Account Manager Yeong Chun Wei (filed on 25 April 2002) in the Bank's application for summary judgment against Tan and Choo.

9 The Bank claimed against the company as principal debtor and against the Tan and Choo as guarantors, the total sum of \$3,691,164.23 comprising of (i) overdraft facility (\$1,982,898.21), (ii) the trust receipts (\$13,675.35), (iii) the import loan (\$534,951.97) and (iv) the term loan facility (\$1,159,638.70) together with contractual rates of interest and, costs on a full indemnity basis.

10 The company did not enter an appearance to the writ of summons and judgment in default of its appearance was obtained by the Bank on 12 April 2002 for the principal sum of \$3,691,164.23 while summary judgment in the same principal amount was obtained against Tan on 3 June 2002, as well as

against Choo. However the judgment against Choo was subsequently set aside on her successful appeal in Registrar's Appeal No. 148 of 2002 (heard on 25 July 2002); the defence she filed on 12 April 2002 was allowed to stand. I should also point out that Choo's previous solicitors discharged themselves from acting for her just before the trial. She explained to the court she did not have the means to pay them.

11 As the trial was confined to the Bank's claim against Choo, I turn my attention to the Defence filed by her former solicitors on 12 April 2002. Whilst she admitted signing the guarantee, Choo denied she was liable thereunder. She pleaded she could not recall signing the guarantee before N on 12 September 1995 or at any other time. She recalled signing certain documents in connection with conveyancing matters regarding the property and another property but she was attended to be another lawyer (Lee Yuen Mai), not N. On one occasion when Lee Yuen Mai was not available, she was attended to by a lady lawyer (whose name she could not recall). Choo alleged that before she signed the documents presented to her, the lady lawyer did not explain the nature of the documents to her; she was not advised on the consequences of signing the guarantee.

12 Choo also averred that she stopped working after the birth of her daughter, became a full-time home-maker and was preoccupied with taking care of and, bringing up the child. Consequently, Tan became the sole breadwinner of the family. She contended that the business of the company was under the sole management of Tan to her total exclusion.

13 Before this trial commenced, the company was wound-up on 17 January 2003 in CWU No. 202 of 2002 by another creditor (DBS Bank for a debt of about \$650,000), while Tan was adjudged a bankrupt in Bankruptcy No. 1320 of 2002 on 20 December 2002, on a petition presented by the Bank.

The plaintiffs' case

14 The Bank called three (3) witnesses one of whom was N who is no longer with the law firm (she left in 1997) but has joined another, with which she continues to do conveyancing and banking work.

15 In her written testimony, N (PW1) recalled attending to Tan and Choo on the morning of 12 September 1996, when Ms Woon was not available. She had before her that day, the file containing the letter of offer, the mortgage (for the property) and the guarantee. N introduced herself to the couple, informed them Ms Woon was unable to attend to them, requested and was given their identity cards to verify their particulars stated in the documentation. She then told the couple that two (2) documents were to be executed by them, namely the mortgage and guarantee.

16 N deposed that as was her usual practice, she explained the terms and provisions set out in both documents to Tan and Choo and also referred to the letter of offer. After her explanation, N asked the couple whether they understood or required further clarification of, the terms and conditions of the mortgage and guarantee; they indicated they understood. She did not notice anything unusual in the behaviour of either Tan or Choo or, that the former appeared overbearing and insistent that Choo should sign the documents or, that the latter appeared intimidated by Tan to sign the guarantee. Had she detected any signs of reluctance or hesitation in either party in the signing of the documents, she would have requested the couple to think over the matter and if need be, even postponed signing to a later date, after the couple had given the matter sufficient consideration. She would also have made a note in the file of her observations and informed Ms Woon (her supervising partner) accordingly.

17 After the couple had signed the documents, they informed her the seal of the company was not yet available as it was in the course of being made, due to the fact the company was only very

recently incorporated. They said they would affix the common seal of the company on the mortgage another day after it was ready.

18 In the course of her testimony, N relied on an attendance note she had made that day and which she exhibited (**NM-2**) to her affidavit. However (as was rightly pointed out by Choo during cross-examination), the attendance note did not corroborate N's testimony. The attendance note merely stated:-

- 1 NM attended to clients, Mr Tan Le Se and Ms Choo Wai Han [who are the directors of the borrower UNIDEN SYSTEMS (S) PTE LTD] who came to execute the mortgage (in dup) and the Guarantee.
- 2 Clients want to redeem the mortgage favouring DBS Bank Ltd and the charge favouring CPF Board.
- 3 Clients instructed us to write officially to DBS Bank Ltd and the CPF Board giving Notice of Redemption after they instruct us by phone to do so as they wish to inform the DBS Bank personally.
- 4 Clients said that their company seal is not ready yet and that they will seal the Mortgage only when it is ready.

19 Notwithstanding there was no mention in her attendance note that she had explained the terms of the documents, N insisted that she did explain to Tan and Choo (whom she knew to be husband and wife) inter alia, the risks of standing as surety, that there was no fixed limit to their personal liabilities (jointly and severally), which exposure would include any increase in the banking facilities which may be subsequently granted to the company, with or without notice to them and with or without their consent. Questioned by Choo how she could be so sure (N/E 6) she had explained what she claimed, N said it was because it has always been her practice to do so, prior to clients signing documents before her, a habit she has adhered to throughout her 8 years of legal practice; she considered it a fundamental requirement for her or any lawyer to observe. Choo countered that if indeed N had explained to her that a consequence of the mortgage and guarantee could be Choo's losing the matrimonial home, Choo would not have signed the documents. I note that N was called to the Singapore Bar on 28 May 1994 and had therefore been in practice for about 1½ years when she met the couple on 12 September 1995.

20 Although she put 11.35 am as the time on her attendance note, N conceded she did not state the duration of her attendance on Tan and Choo; however, she estimated it would have been 35-45 minutes. This estimate was disputed by Tan and Choo who both testified that it lasted no more than 5-10 minutes; they executed the documents in a hurry with their car and driver waiting for them below Six Battery Road Building.

21 Questioned by the court/Choo, N estimated she would have witnessed 1-2 signings of documents every month in 1995 as the law firm was fairly large and would have had a healthy volume of property and loan transactions in 1995-96. N could not recall meeting the couple prior to 12 September 1995 but remembered speaking to Choo on the telephone on or about 15 September 1995, when she called the latter to ask if the common seal of the company was ready.

22 Asked by Choo how she could recall so vividly an event which took place so many years ago, N explained it was because Choo or Tan had told her the company's common seal was not ready, something which had never happen throughout her years of practice, when she witnessed execution

of documents by companies. N disagreed with Choo that because there was nothing out of the ordinary about the couple, there was no reason for her to recall specifically this meeting with Tan and Choo so long ago.

23 Very little turns on the testimony of the Bank's other witnesses (2), one of whom was Christina Chua (Chua), the head of corporate financial services, who was previously in charge of the company's account, after it had turned delinquent. Chua (PW2) was a loan officer with the Bank's loan and recovery department between December 1998 and April 2000. She recalled being invited for lunch by Tan in December 1999 where she was introduced to Choo. Chua recalled that the conversation during lunch was more a social chit-chat than a serious discussion on the restructuring of the company's account. At one point during lunch, Choo had expressed her gratitude to the Bank for being understanding of the then difficulties faced by the company in its business. Chua opined that the relationship between the couple appeared normal and there was no sign that Choo was afraid of Tan or, that the latter dominated her.

24 Other than that lunch meeting, Chua testified that her dealings with the company were usually through contacting Tan and in his absence, she would liaise with Choo. She recalled a few occasions when she telephoned the company's office and she was put through to Choo by the staff. On other occasions (particularly before October 1999), Choo herself had called Chua on matters concerning the company's account, which included settlement of trust receipts on which matters Choo appeared to be familiar.

25 Chua disputed Choo's denial of involvement in the business of the company. Chua exhibited to her affidavit copies of letters written between January-October 1999 by the company, some of which were signed by Tan and others by Choo.

26 The last witness for the Bank was its senior manager Lim Eng Bock Albert (Lim) who (as its former senior account relationship manager) was instrumental in procuring the company as a customer for the Bank back in mid-1995. Lim (PW3) recalled he understood from market information at the time that the company's business was being run by a husband and wife team, with Tan in charge of sales and Choo taking care of finance. Lim verified his market information by having the couple complete a form giving details of their business and responsibilities, when Uniden applied for trade finance facilities. The Bank had also done Registry of Businesses and Companies searches on the partners of Uniden and the company, respectively. Choo pointed out that she neither completed nor signed, the Bank's form; it was done by Tan. She saw the form for the first time in court, in which Tan had stated she was in charge of finance, marketing, administration, production, shipping and, she had five (5) years' experience (see AB25-27). Lim was not aware (until Choo informed him in court) that she was not in charge of accounts at the company, had never handled accounts and, she has an aversion to figures.

27 The granting of facilities to the company first commenced based on the letter of offer which Lim co-signed with the Bank's then Relationship Manager. Lim did not sign the second or third letters of offer. Lim recalled meeting Choo briefly when he visited the office of Uniden, which was then at International Plaza. Tan had introduced Choo to Lim as his wife and partner. Lim repeated Chua's assertion – he did not form the impression that Choo was in any way dominated by Tan so as to appear to be intimidated.

28 Although Lim's (written) testimony had stated that he met Choo a few times at the offices of Uniden (and later the company) after their initial introduction, he admitted that he had never spoke to her on those occasions, nor did she join in the discussions he then had with Tan. However, after he was transferred to the Bank's trade finance department, he recalled Choo had telephoned him on a

few occasions to inquire on the status of letters of credit. He was not aware that on those occasions, it was the company's staff who had requested Choo to speak to him. She was also his contact for the company whenever Tan was away from Singapore. On the occasions when he called her, Choo did not inform him she had nothing to do with the company's business. Lim disagreed with Choo that they only knew one another socially as friends, although he admitted having played golf with Tan *once in a while* (N/E 21). This denial was rebutted by Tan who testified (N/E122) that Lim was more a personal friend with whom he played golf than a banker and, he (Tan) would have mentioned to Lim that Choo was only a symbolic figure in the company, who did not make the decisions. Lim claimed it was only after the company's account with the Bank had become delinquent, that he became aware of the couple's marital problems.

The third defendant's case

29 When Choo took the witness stand, she explained that her role was that of a dutiful wife to Tan. Notwithstanding she was a university graduate, Choo had been brought up in a family in which women were expected to be obedient and submissive to the men in the household. Since she married him, Tan had always been the dominant partner, taking full control and charge of all matters regarding money and business, even which school her daughter should attend. This fact was known to her family and friends. Indeed, they could see it for themselves – whenever the couple went shopping, she would seek Tan's opinion on anything she intended to buy. She never doubted Tan's integrity in handling the finances of the family or the business of company and trusted him without question. It would never occur to her to have informed Lim that she had nothing to do with the business of the company as the Bank's counsel had suggested, because Tan would have scolded and become angry with, her. She was not/never allowed to question him. Tan consistently told her that she was incapable, that she did not have a business mind and, treated her as a non-entity.

30 As for the fateful attendance on her and Tan by N on 12 September 1995, Choo was very clear signing of the documentation was done in haste, with the meeting lasting less than ten (10) minutes, inclusive of waiting time at the reception area. The rush was reflected in her scribbled signature in the guarantee where the alphabet 'i' in her middle name 'Wai' was not dotted, as contrasted with her signatures in a directors' resolution dated 18 September 1995 (at AB39) and in the first letter of offer. It was her practice, when signing important documents, to do so rather deliberately. Choo did not even recognise her in court when N testified; she could not recall N's name, only that the couple was attended to by a lady solicitor.

31 Pressed by the court on what she thought she was signing before N, Choo said (N/E 46) *some bank/property documents* but she did not know it was a mortgage on the property and a guarantee. Although she could have, Choo did not read/look at the documents before she signed. Questioned further, Choo said N probably would have told the couple it was a mortgage document but not the risks and consequences thereof. Nothing was clearly explained to her and *for sure*, N did not explain in detail the guarantee, she merely gave the documents to the couple to sign. She certainly did not tell Choo she was responsible for debts up to \$5m. Choo recalled N saying she was covering for another person and hurried the couple to sign quickly, it was not that the couple were in a rush to sign because their driver (and car) was waiting for them along Battery Road. Further, N probably talked more to Tan. It was also not her practice to talk a lot with strangers unless she had to.

32 Choo testified that when she was in the civil service (for 22 years), she worked in personnel management/office administration divisions with the various ministries to which she was posted. It was only after she resigned from the civil service (in 1993) to take care of her daughter full-time, that Tan paid her a salary/director's fee (\$2,000). Even then, it was only after she had exhausted her own funds; the payments stopped in any event in 2000/2001. After her resignation from the civil

service, Choo said she would sometimes take her daughter to Uniden's office (then at International Plaza) to play and then to eat at a food outlet in the building. She spent her time ferrying her only child to and from school, tuition classes, extracurricular and other activities, having waited 14 years before her daughter arrived.

33 Choo could not explain why Tan made her a partner of Uniden and then a director of the company. Neither did she know why he converted Uniden into a limited company. She did not know the meaning (or difference) between issued and paid-up capital. Tan had never consulted or discussed business matters with her; he merely asked her to sign documents whenever the occasion called for it and she would comply without question. She had signed the first letter of offer on that basis when Tan put the document before her but she was aware it was because Tan wanted some facilities from the Bank. However, she did not read or scrutinise the document. Consequently, she was not aware that the facilities to be granted under the first letter of offer were to be secured by a personal guarantee from her/Tan and, by a mortgage of the property. Due to his constant travels, Tan needed someone to sign bank documents during his absence. She did not know why Tan selected her and not one of the company's staff to be a signatory of the company's bank account, but assumed it was because she was his wife. She denied her signatures on letters from the company to the Bank in 1998-99 showed her involvement in its business. The letters were signed when Tan was out of Singapore and the accounts staff who prepared them needed to send the same to the Bank urgently.

34 At the material time, the couple also owned a condominium (Astrid Meadows) and Tagore Lane office(s) of the company and earlier, a terrace house. She played no part in the decisions to purchase these other properties nor was she privy to the financing arrangements; neither did she ask nor was she told by, Tan. Choo did not service the mortgage instalments on the property or those of the other properties the couple owned; she assumed Tan must have done so. She did not know the couple's financial standing, she did not consider themselves well-off but believed that the business of the company was the family's sole/main source of income. It was Tan who paid the bills and all household expenses (save for the maid and maid's levy) and she spent her salary and later her director's fee, as she pleased. She was not sure how successful Tan was nor of what he did, although she never doubted his ability to provide for the family. She gave Tan full credit for building up the company and its business, she did not help him.

35 Apart from signing the guarantee and the mortgage of the property, Choo recalled only two (2) other occasions when she entered into agreements. The first occasion was when she bought an apartment (at Neptune Court) meant for civil servants about four (4) years after her marriage (using a government loan) and the second, signing a guarantee of DBS Bank in 1998-2000. Save for Tagore Lane (which documentation was also handled by the law firm), Choo could not remember signing legal documents for the other properties she jointly owned with Tan, not even tenancy agreements.

36 Questioned on her meeting with Chua in December 1999, Choo explained that by then the company's financial difficulties had surfaced (in 1998); Tan felt sorry she had been excluded from the running of the company and wanted to get her involved. He had requested her that day to meet the credit officer in charge of the company's account. When she realised that the company was in financial trouble, Choo was willing to help Tan to discharge the company's debts. It was not because she knew she was liable to the Bank on the guarantee. She also wanted to save her marriage, albeit half-heartedly as by then, Tan had left her. Hence, she signed whatever documents Tan requested, including the Option dated 13 February 1999 (AB133) to sell Astrid Meadows as well as the letter of undertaking dated 19 March 1999 (AB127) whereby she agreed (with Tan) to pay the Bank the net sale proceeds of the flat (less redemption sum) even though it was not mortgaged to the Bank.

37 Choo admitted she had never once informed the Bank in writing (prior to filing her Defence) that she had signed the mortgage and guarantee under Tan's undue influence. Neither had Choo informed N that she was not involved in the company's business, that she was only a director/shareholder in name only or, that she was unwilling to sign the mortgage and guarantee. She did not deny calling N on 15 September 1995 in relation to the common seal of the company. However (in 2002), accompanied by her sister, she had visited the Bank's Account Manager (Yeong Chan Wei) once and told him she did not know what she had signed in 1995. She did not deny liability when she received the letter of demand from the Bank's solicitors dated 27 April 2001 but, had telephoned the same Mr Yeong to say the guarantee should be void and she should be allowed to withdraw; she had then repeated that she did not know what she had signed.

38 Tan (DW2) corroborated the testimony of his estranged wife; he agreed he was domineering but he did not consider himself a tyrant. If he was, then he was a benevolent tyrant. In any case he was a good provider. Tan explained that Choo deferred to him in all matters as the head of the household, before his business collapsed and he separated from her. She would go along with him in all major decisions because he had a good track record of 11 years. Why should she doubt him? It was his practice to make all the arrangements regarding financial matters, tell Choo it was done and ask her to sign documents, she complied without question. This was partly due to her upbringing in a traditional family where males and females were given disparate treatment, with the former being regarded as superior to the latter. Her brother was treated better than her by her family even though both of them went to university.

39 Tan recalled that he would have told her to accompany him to sign documents for the facilities/loans the Bank had approved for the company, either just before they visited the law firm on 12 September 1995, or earlier. He would not have told her the details regarding the loan amounts nor did she ask. He said Choo did not have the depth of knowledge to appreciate the transactions involved and in any case, she was more concerned about bringing up their child.

40 As he travelled extensively in the course of business, Tan said he made Choo his partner (symbolically) in Uniden; he needed someone of *his own person* to represent him. He also had a history of hypertension which in May 1995, caused him to suffer a heart attack. He decided to make Choo a director/shareholder of the company in case something happened to him, pointing out that Uniden and later the company, provided the sustenance/income for the family. Due to his concerns about the personal liabilities of sole-proprietors and partners, he had converted Uniden into a limited liability company, on the advice of his accountants.

41 Although he was aware of the consequences of signing a personal guarantee, Tan opined he thought there was no risk involved for Choo or, the risk was controlled. The company's business was then doing well and he thought they had sufficient assets to cover the borrowings from the Bank. With the facilities granted by the Bank, the company could do more business and get better returns, from which Choo ultimately benefited, in terms of more prosperity for the family. He did not think he was exploiting her by asking her to sign the mortgage and guarantee. After ten (10) years of successful trading, Tan said he did not expect or foresee the serious downturn in 1998-99. The company was also cheated of \$1.8m, he/it was the victim of circumstances. He pointed out that even after the 1998 financial crisis, the company still managed to pay the Bank \$80,000 per month for six (6) months; he had every intention to repay the Bank's loans in full but, circumstances did not permit it and eventually, he was made a bankrupt.

42 Tan also corroborated Choo's claim that the meeting with N on 12 September 1995 was very brief, it was over in less than 10 minutes. He considered it a formality for operation of the facility granted by the Bank and recalled that N gave the impression that the couple already knew what they had to

sign. It was a pre-determined thing, without much explanation of details. He himself did not tell Choo what she was signing and if N did, it was only in passing.

43 Apart from Choo's purchase of Neptune Court, Tan testified that all other properties which the couple purchased during their marriage were procured by him. Choo played no part in the decision-making process; he merely told her when the purchases were made and she would sign whatever (legal) documentation required by him. He arranged all the financing whilst the company's operations serviced the mortgage instalments. Although Choo made no contribution towards either the purchase prices of the properties (save for the terrace house which purchase price came partly from the sale proceeds of Neptune Court) or the mortgage instalments, Tan had always treated her as having 50% share in these assets – she was his wife, it was a *matter of decency and fairness* (N/E116).

44 Tan also confirmed Choo's testimony that she took his instructions by telephone whenever he was overseas, which was 4-5 months in a year. Even then he would normally speak to the staff first so that they could brief him on problems, before he asked to speak to Choo, only if it was necessary. The staff well knew that decisions and approvals had to be sought from him, not her. Letters were typed out and sent to him for approval when he was absent from Singapore; he even drafted faxes and letters to customers for Choo to sign. When he was away, Choo would drop by at the office after sending their daughter to school; she would then leave by about 12.30pm to pick the child up after school. Her presence or absence from the office was not relevant as, he was the key person for the business; he not she, ran the company. He never involved her in the running of the company. Indeed, they hardly communicated because Choo was too involved in the child (N/E133). Questioned by the court, Tan said he belittled Choo, not her job as a civil servant (N/E 134). He also confirmed he completed the form Lim required when the Uniden/the company applied for trade facilities from the Bank, without any input from Choo.

45 Choo's last witness was Ng Suan Chiok (Ng), a director of NSC Management Services (NSC), the firm which provided bookkeeping services to the company and, which was responsible for Uniden being converted from a partnership to the company. Ng (DW3) became acquainted with Choo (in 1995) after the company was incorporated. She knew Choo was Tan's wife and had spoken to/met Choo in the office of the company a few times; she would visit the company's office once or a twice a year, usually in April and or August, to go through the accounts. She stopped her visits in 2001. Ng said apart from the fact they were husband and wife, she was not aware of the relationship between the couple until sometime last year, when she learnt they had a dispute. At all material times, Ng said she took instructions from Tan regarding the management of the company, she never received any input or instructions from Choo nor did the latter join in any discussions or meetings which Ng had attended relating to the company.

The issues

46 The twin issues the court has to determine are:

- (i) did Choo know she was signing a guarantee on 12 September 1995?
- (ii) was or was not she under the undue influence of Tan when she signed the guarantee?

A peripheral question which arises if a finding is made in Choo's favour on the second issue is, did the Bank have notice of Tan's undue influence on her?

The law

47 Choo had said under cross-examination (N/E 83B) that by undue influence, she meant Tan was the dominant personality and she was not allowed to question him. For the legal meaning of that doctrine, I turn to *Chitty on Contracts* vol 1 (28th ed at p 411 para 7-002) where the learned authors state:

...A party who was subject to duress or undue influence, was often said to have had his will 'overborne' so that he was incapable of making a free choice or even of acting voluntarily.....A person acting under duress intends to do what he does, but does so unwillingly....

There is a further classification of undue influence, one at law and the other in equity; we are concerned with the latter classification for this case.

48 Counsel for the Bank had relied on some local authorities in his closing submissions. The first was *Rajabali Jumabhoy & Ors v Ameerдали R Jumabhoy & Ors* [1997] 3 SLR 802. There Prakash J held (at p 854 para 184):

The doctrine of undue influence allows a person to avoid a transaction he has entered into on the ground that in entering it he was not exercising an independent will because of the undue influence asserted on him by another person. There are two (2) categories of undue influence, namely, presumed and actual undue influence. To succeed under the 'presumed undue influence' category, the following elements need to be proved:

- (a) the existence of a particular relationship which enabled one party to it to influence the decisions of the other;
- (b) that the resulting transaction was manifestly disadvantageous to the person subject to the influence.

Upon proof of the above elements, the burden shifts to the defendant to prove that no undue influence had been exercised. The presumption can only be rebutted by showing that the ascendant party did not abuse his position and that the subservient party understood what he was doing and was in a position to exercise a free judgment based on full information.

49 The second case relied on by the Bank was *Pelican Engineering Pte Ltd v Lim Wee Chuan & Anor* [2001] 1 SLR 105 where Goh Joon Seng J (at p 112 para 32) adopted the meaning of undue influence applied by LP Thean JA in *Lim Geok Hian v Lim Guan Chin* [1994] 1 SLR 203 (at p 216):

Undue influence is the unconscientious use of one's power or authority, over another to acquire a benefit or to achieve a purpose. *Allcard v Skinner* (1887) 36 Ch D 145 established that cases of undue influence fall into two categories: first, cases where actual influence has been proved to have been exercised, and, second, cases where, by virtue of a particular relationship between the parties, the court presumes that undue influence has been exercised unless the contrary is proved.

50 In this regard, I would also like to refer in some detail, to the House of Lords' landmark decision in *Barclays Bank v O'Brien* [1993] 4 All ER 417, in particular to the following passages in Lord Browne-Wilkinson's judgment (at pp 423-425):

Undue influence

A person who has been induced to enter into a transaction by the undue influence of another

(the wrongdoer) is entitled to set that transaction aside as against the wrongdoer. Such undue influence is either actual or presumed. In *Bank of Credit & Commerce International SA v Aboody* [1992] 4 All ER 955 (at 964) the Court of Appeal helpfully adopted the following classification.

Class 1: *actual undue influence*. In these cases it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned.

Class 2: *presumed undue influence*. In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In class 2 cases therefore, there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two (2) ways, viz:

Class 2A. Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class 2B. Even if there is no relationship falling within class 2A, if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a class 2B case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.

.....It was not until the decisions in *Howes v Bishop* [1909] 2 KB 390 and *Bank of Montreal v Stuart* [1911] AC 120 that it was finally determined that the relationship of husband and wife did not as a matter of law raise a presumption of undue influence within class 2A.....

An invalidating tendency?

Although there is no class 2A presumption of undue influence as between husband and wife, it should be emphasised that in any particular case a wife may well be able to demonstrate that de facto she did leave the decisions on financial affairs to her husband thereby bringing herself within class 2B, ie that the relationship between husband and wife in the particular case was such that the wife reposed confidence and trust in her husband in relation to their financial affairs and therefore undue influence is to be presumed. Thus, in those cases which still occur where the wife relies in all financial matters on her husband and simply does what he suggests, a presumption of undue influence within class 2B can be established solely from the proof of such trust and confidence without proof of actual undue influence.

Undue influence, misrepresentation and third parties

.....But in surety cases the decisive question is whether the claimant wife can set aside the transaction, not against the wrongdoing husband, but against the creditor bank. Of course, if the wrongdoing husband is acting as agent for the creditor bank in obtaining the surety from the

wife, the creditor will be fixed with the wrongdoing of its own agent and the surety contract can be set aside as against the creditor. Apart from this, if the creditor bank has notice, actual or constructive, of the undue influence exercised by the husband (and consequentially of the wife's equity to set aside the transaction) the creditor will take subject to that equity and the wife can set aside the transaction against the creditor (albeit a purchaser for value) as well as against the husband...

51 The last authority relied on by the Bank was the (unreported) case of *ING Bank v Inselatu Co Pte Ltd & 2 Ors* (Suit No. 1005 of 1999). As Choo wrote to the court making further submissions on this case after trial had concluded (and which drew a response from the Bank's solicitors), a closer examination of this case is warranted, in the interests of justice.

52 The facts in that case were somewhat similar to ours. A husband and wife team who were directors of the first defendant company, were sued as second and third defendants respectively by ING Bank (ING), on joint and several guarantees they had given to ING to secure facilities extended to the first defendant. The third defendant appealed to a judge in chambers to reverse the summary judgment granted to ING by a court below.

53 In resisting ING's application for summary judgment, the third defendant had filed an affidavit (with leave) in which she inter alia alleged that, her estranged husband (from whom she was separated under a 1966 Deed of Separation) had harassed her in and out of the home and the office. She deposed that she was also the victim of his abusive behaviour, his vulgarities and his threats of violence. She was fearful that, he would renege on his promise to maintain her and their children, oppose her divorce petition and, create problems for her in regard to removal of items from the matrimonial home for her relocation to the United States. The third defendant claimed she signed ING's guarantee (at the first defendant's office) under pressure of such circumstances, without the presence of a witness and without advice on the terms of the guarantee. Her counsel relied on *Barclays Bank v O'Brien*.

54 In dismissing the third defendant's appeal, JC Tay distinguished held her facts situation from those in *Barclays Bank v O'Brien*; there was no evidence to suggest that the third defendant was misled by the second defendant as to the effect of the document she signed to secure the first defendant's debt. The third defendant signed the guarantee in October 1996 two (2) months after the Deed of Separation; she was by then de facto free of her husband. The judge pointed out that the third defendant was a businesswoman in her own right and held majority shares (besides being a director) in another company as well as the entire legal and beneficial interests in yet a third company. It was not her case that she did not know what she was signing; she was well aware of the obligations she undertook. Consequently, the third defendant had failed to show undue influence on her by the second defendant.

55 When Choo wrote to court after the case was concluded, she sought to distinguish the facts in the *ING* case from her own. She also referred to another case contained in the Bank's solicitors' bundle of authorities, viz *Royal Bank of Scotland v Etridge* (No 2) [2001] 4 All ER 450. Choo pointed out that unlike the third defendant in *ING's* suit, she was not a capable businesswoman but a full-time homemaker raising her/Tan's daughter. She only helped with non-critical tasks in the company's office when her daughter was in school or attending extra-curricular activities. As for the *Royal Bank of Scotland* case, Choo referred to the following passages from Lord Nicholls' judgment (at pp 466 and 485-6):

49. Less clear cut is the case where the wife becomes surety for the debts of a company whose shares are held by her and her husband. Her shareholding may be nominal, or she may

have a minority shareholding or an equal shareholding with her husband. In my view the bank is put on inquiry in such cases, even when the wife is a director or secretary of the company. Such cases cannot be equated with joint loans. The shareholding interests, and the identity of the directors, are not a reliable guide to the identity of the persons who actually have the conduct of the company's business.

112. A further point of relevance which has been commented on in the past and should be commented on again has been the use by banks of forms under which the surety gives an unlimited guarantee or charge. This was what banks ordinarily asked for. Indeed, the guarantees obtained in the cases from which these appeals arise, are unlimited. Banks have acknowledged that such guarantees are likely to be unnecessary and unjustifiable where private sureties are sought. They should be subject to a stated monetary limit on the surety's liability and any legal advisor should so advise a private client. Where a bank has nevertheless obtained an unlimited guarantee from a wife, it should ask itself how that can be if the wife has indeed been independently advised. Would anyone who had a proper regard to the wife's interests ask her to sign an unlimited guarantee or charge?

56 *Royal Bank of Scotland* actually involved eight (8) appeals, each case arising out of a transaction in which a wife charged her interest in her home in favour of a bank as security for her husband's indebtedness or, the indebtedness of a company through which he carried on business. The House of Lords allowed five (5) and dismissed the remaining three (3), appeals.

57 In her further written submissions, Choo said:

The point about the influence, which [Tan] had exercised over me at that time being undue, is that I had no say in the running of the company and never had.

I had to rely on his good faith and fairness to me in the decisions, which he always made for us.

I never knew what the company's facilities were actually used for, or whether the purposes for which they were used were entirely proper or were questionable or highly speculative.

Yet, I was required by the plaintiffs to give an all monies unlimited Guarantee which [Tan] has asked me to sign as a matter of course.

If [Tan] had a proper regard for my interests, as his wife, would he have asked me to sign an unlimited Guarantee?

58 In their response to Choo's further submissions, the Bank's solicitors argued that her position bore more similarities than differences, with that of the third defendant in *ING's* case. They submitted that, unlike the wife in *Barclays Bank v O'Brien*, Choo, like the third defendant in *ING's* case, had a direct financial benefit from the facilities offered by the Bank. Indeed, Choo was cross-examined quite extensively on this fact 幸 that the company's prosperity (before the downturn in 1988 and after) funded the couple's comfortable lifestyle. They pointed out that *Royal Bank of Scotland* did not change the principles laid down in *Barclays Bank v O'Brien*; neither case stood for the proposition that once there is a husband and wife relationship, the mortgage or guarantee signed by the wife in favour of the bank must be set aside on the ground of undue influence. The House of Lords in *Royal Bank of Scotland* had accepted that it is reasonable for a bank to rely on the confirmation from the wife's solicitor that he/she had duly advised the wife. Any defects in the advice was a matter between the wife and the solicitor, and does not affect the bank's position vis a vis the wife.

59 In regard to the last sentence in the above paragraph, I would like to refer to two (2) other passages from the judgment (at p 486-7) of Lord Nicholls in *Royal Bank of Scotland*:

114 The use of solicitors has given rise to further practical (and to a limited extent legal) problems. The first is ensuring that the solicitor is in possession of the relevant facts as known to the bank.

115 Another consequence of using solicitors is in the risk of confusion about what the solicitor's role is to be. The solicitor will normally have been instructed by the bank to act for it. The solicitor will often already be acting for the husband. The solicitor may not be acting for the wife at all, let alone separately and independently from the solicitor's other clients. Similarly, the solicitor's instructions may simply be to explain to the signatories the character and legal effect of the documents. This is a low order of advice which can be given solely by reference to the formal documents to be signed. It is also important to appreciate that the solicitor's role may simply be to witness a signature. Such a role involves no necessary relationship whatsoever between the solicitor and the signatory. Indeed they may have or represent conflicting interests. The solicitor may simply have been instructed by one party to see and be prepared to provide evidence that the relevant document was signed and delivered by the other party. Seeing that a solicitor has witnessed a signature itself means nothing. Even when a solicitor is instructed to explain the character and legal effect of a document, he will not without more concern himself at all with the interests of the wife or whether she is accepting the obligations freely and with knowledge of the true facts. Under these circumstances it is scarcely surprising, as the facts of these cases and many others show, that wives are still signing documents as a result of undue influence. The involvement of a solicitor has too often been a formality or merely served to reinforce the husband's wishes and undermine any scope for the wife to exercise an independent judgment whether to comply.

60 I should point out that in an earlier case (*National Westminster Bank v Morgan* [1985] AC 686), the House of Lords adopted a far narrower interpretation of the doctrine of undue influence. In reversing the Court of Appeal's decision in favour of the wife respondent there, the law lords held that the presumption that undue influence was used only arises if the transaction is '*manifestly disadvantageous*' to the person influenced (per Lord Scarman at p 704). In *Royal Bank of Scotland*, Lord Bingham (at p 461-2 para 26) opined that Lord Scarman's expression had given rise to misunderstanding, and had been applied in a way which did not accord with the meaning intended by Lord Scarman. His Lordship added:

27 The problem has arisen in the context of wives guaranteeing payment of their husband's business debts. In recent years judge after judge has grappled with the baffling question whether a wife's guarantee of her husband's bank overdraft, together with a charge on her share of the matrimonial home, was a transaction manifestly to her disadvantage.

28 In a narrow sense, such a transaction plainly ('*manifestly*') is disadvantageous to the wife. She undertakes a serious financial obligation, and in return she personally receives nothing. But that would be to take an unrealistically blinkered view of such a transaction. Unlike the relationship of solicitor and client or medical advisor and patient, in the case of husband and wife there are inherent reasons why such a transaction may well be for her benefit. Ordinarily, the fortunes of husband and wife are bound up together. If the husband's business is the source of the family income, the wife has a lively interest in doing what she can to support the business. A wife's affection and self interest run hand-in-hand in inclining her to join with her husband in charging the matrimonial home, usually a jointly-owned asset, to obtain the financial facilities needed by the business. The finance may be needed to start a new business, or expand

a promising business or rescue an ailing business.

The findings

(i) did Choo know she was signing a personal guarantee on 12 September 1995?

61 Having set out the law, I turn my attention now to the evidence adduced in court to see how the law applies; I start by considering Choo's evidence. I preface my comments with the observation that she conducted her own case admirably, given that she has no legal training. She came across as an intelligent woman but, one who was disinterested in anything once her daughter was born, after 14½ years' of childless marriage. By her own admission (corroborated by Tan), it would appear that Choo's life after September 1987 revolved around the child, to the exclusion of anything/everything else.

62 Tan had explained, for reasons which I accept, that essentially he ran the business of the company single-handedly but, due to his frequent travels (and his heart attack in 1995), he decided (for practical reasons) to appoint Choo as another director as well as cheque signatory. Consequently, if Choo went to the office in the years 1995-98, it was to enable the staff to get cheques or letters signed on the company's behalf and, also to kill the hours until it was time to pick her daughter up from school, or from extracurricular activities. I conclude therefore that Choo was not involved at all in the business of the company. Equally, I accept her explanation that her personal contacts with the Bank in those days were made at the staff's behest, not of her own initiative, just as she attended the lunch meeting with Chua in December 1999 at Tan's request.

63 Next, I refer to certain portions of Choo's evidence as regards the couple's visit to the law firm on 12 September 1995. When the court inquired if she knew she was signing a mortgage that day, Choo had said (N/E 47E):

I don't care what I signed, so long as 2nd defendant signed, I trusted him, I don't think he would put me in a risky position.

Later, she reiterated (N/E48C):

..... Whatever he signed, I followed suit.

64 Under further cross-examination (N/E 84F), Choo said:

I knew I was signing the mortgage but I didn't know I was signing a guarantee and the consequences of signing it.

Later, when questioned why she never informed the plaintiffs if she had any concerns about signing the two (2) documents Choo explained (N/E 91A):

....I couldn't ask as I didn't even know I was signing the guarantee.

65 Tan however certainly knew the purpose of calling on the law firm that day - it was to sign both the mortgage and the guarantee. He would probably have told Choo that morning or earlier, that they were going to the law firm's office to sign bank loan documents; whether the significance registered with Choo is another matter. Unlike Choo, Tan treated the signing as a mere formality. He well knew that unless he/Choo signed the letter of offer followed by the mortgage and guarantee, the company would not be given the facilities he had applied from the Bank; so much for the bargaining

power of customers with banks. The commercial realities in banking is such that, borrowers are in no position to bargain with lenders - banks dictate and customers accept, their terms. Given the remarks by Lord Nicholls in *Royal Bank of Scotland* case (para 59 *supra*), there can be little doubt that a solicitor who acts for both mortgagor and mortgagee in such loan transactions are in a conflict of interest situation, despite N's disagreement to the contrary with Choo (at the start of her cross-examination by the latter) and, notwithstanding that it is a common (albeit not commendable) practice in Singapore.

66 Now for N's own testimony. It should be noted that she was recalling events which took place more than seven (7) years earlier. How could N be so sure as Choo said, that she had explained all that she said she did to the couple? I do not believe that N did. My belief is reinforced by N's own attendance note which text I had set out in full earlier (para 18 *supra*). The note is conspicuously silent on what she allegedly explained to them. It is highly unlikely she advised the couple on the risks of the guarantee they were signing, let alone that she spent 45 minutes in doing so as she claimed; I accept what both Tan and Choo asserted ³ it was a short, very rushed meeting wherein they were told (briefly) they had to sign a mortgage and personal guarantee. More importantly, N was not attending to her own file then but, was covering the work of another solicitor who was her supervising partner.

67 Yet another factor which convinces me that N did not apprise Choo of the risks (let alone consequences) of signing an all monies personal guarantee was her relative inexperience then; N had been in legal practice for less than 1½ years as at 12 September 1995. It is all very well for her to now say (after 8 years of practice) that it is her habit to explain to parties appearing before her, the terms of the documents they are asked to sign. Such a habit is culled from experience; it would not have been second nature to her in 1995.

68 On a preponderance of the evidence therefore, I believe that Choo knew she was signing a mortgage as well as a guarantee on 12 September 1995 as, N would have mentioned the nature of the documents in passing. However, Choo did not appreciate (because she was not told) the risks and consequences of signing an unlimited liability guarantee.

(ii) was Choo under the undue influence of Tan when she signed the guarantee?

69 The undue influence in this instance would be *presumed undue influence*, coming under class 2B of Lord Browne-Wilkinson's classification in *Barclays Bank v O'Brien* (para 50 *supra*), arising from the couple's husband-wife relationship. I doubt there was actual undue influence, given the evidence adduced in court from the Bank's two (2) representatives, that there was no perceived intimidation or overbearing or bullying conduct on Tan's part, whenever they saw him with Choo.

70 Granted Choo had no independent advice; the further question which then arises is, would it have made any difference if she had been advised of the risks involved by N? I think not. I believe Choo would still have signed the guarantee regardless of the risks involved, contrary to her claim otherwise.

71 Due to her upbringing and or own personality, Choo did not question let alone resent, Tan's dominance of her. She accepted it willingly as a way of her life, content in the knowledge that Tan (as he himself had said) was a good/generous provider (despite his low opinion of her capabilities) who came back from his overseas trips with gifts for her; he would do her no harm in whatever he asked her to do/sign. Consequently, it cannot be said that her will was 'overborne' when she signed the mortgage and guarantee. Tan had testified there was no reason for her to doubt his capability (N/E 105). Although she made no contribution to the business of the company, he was willing to and did share with her equally, the fruits of its success, as exemplified in his purchase of 4-5 properties in

their joint names, as well as a BMW motor vehicle for her use.

72 At this juncture, it would be appropriate to revisit what Lord Bingham said (at paras 27- 28) in *Royal Bank of Scotland* (para 60 *supra*). To quote his lordship, to say that Choo's signing of the guarantee was a transaction manifestly to her disadvantage *would be to take an unrealistically blinkered view of such a transaction*. Tan's business was the source of the family income; it was in Choo's interest to support the business. Tan had explained that he took the Bank's facilities pursuant to the letter of offer (and second and third letters of offer), in order to expand the business of the company and get better returns, from which Choo ultimately benefited, in terms of more prosperity for the family (N/E 117). That would also explain why Choo was willing to help discharge the company's debts by allowing the Bank to take the net sale proceeds of Astrid Meadows, even after her marriage to Tan had broken down. If he was indeed a tyrant (which he disagreed), Tan had said he would consider himself a benevolent tyrant as, whatever he did or asked Choo to do, was for the good of the family.

73 Moreover Choo herself had testified (paras 63-64 *supra*) that she did not care what she signed, so long as Tan signed, because she trusted him and she did not think he would put her in a risky position. It bears mentioning also that Choo could have questioned N on the documents she was asked to sign, when the latter failed to explain; there was nothing to stop her from doing so. The fact her queries may have prompted a scolding from Tan is not a valid excuse. Her omission to do so reinforces my belief that it would have made not one iota of difference to Choo even if she knew she was signing and the consequences of, an unlimited guarantee. I am a little sceptical of her answer (at N/E 91A) when it was put to her by counsel that she did not inform the Bank she was unwilling to sign the mortgage or guarantee:

Yes but I couldn't ask as I didn't even know I was signing the guarantee.

I am certain Choo knew she was signing a guarantee but, she did not want to know more. She would still have signed the document even if she was aware of the full implications because, she had complete faith in Tan. Choo was a homemaker by choice, not by circumstances; I cannot overlook the fact that she is a degree-holder, even if she had not made use of her qualification for two (2) years (after she ceased working in 1993) by the time she signed the guarantee. Choo is considerably more intelligent than and a far cry from, the uneducated/ignorant housewives in cases where courts have set aside mortgages and guarantees, based on the husbands' undue influence.

74 Even if I am wrong in my finding and Tan did exercise undue influence on Choo when she signed the guarantee, I would answer the peripheral question (whether the Bank knew of his undue influence) in the negative. In the light of my earlier observation (para 69 *supra*), that the Bank's two (2) officers did not actually notice any unusual conduct between Choo and Tan, I need only determine whether the Bank had constructive notice of his undue influence. I would also answer this second question in the negative. There was nothing out of the ordinary in the couple's relationship so as to warrant the Bank to conduct further investigations, before they had the couple sign the letter of offer, followed by the mortgage/guarantee. It is certainly not unusual in the Singapore context, for a husband and wife team to incorporate and then to run, small companies by themselves.

Conclusion

75 In the light of my observations, I find (not without some regret) in favour of the Bank on their claim against Choo. Accordingly, the Bank shall have judgment for the various sums they have claimed against Choo as guarantor, together with interest at the contractual rate, plus costs on an indemnity basis.

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