# Kua Hui Li *v* Prosper Credit Pte Ltd
# [2014] SGHC 108

**Case Number** : Originating Summons No 156 of 2014

**Decision Date** : 09 June 2014

**Tribunal/Court** : High Court

**Coram** : Choo Han Teck J

**Counsel Name(s)** : Adeline Chong (Legal Ink Law Corporation) for the plaintiff; S R Shanmugam (Shan & Co) for the defendant.

**Parties** : Kua Hui Li — Prosper Credit Pte Ltd

*Land – Caveats – Remedies of caveatee*

9 June 2014 Judgment reserved.

**Choo Han Teck J:**

1 This was an application by the plaintiff to remove a caveat lodged on her property located at 1 Rodyk Street #10-11 Watermark Robertson Quay, Singapore ("the Property"). This caveat was lodged by the defendant, a licensed moneylender that had (unbeknownst to the plaintiff) extended a loan to the plaintiff's former husband.

2 The Property was the matrimonial property of the plaintiff and her former husband, Ore Boon Leong ("OBL"). It was held by them as joint tenants. When the marriage failed, the parties agreed on a deed of settlement dated 16 January 2012. Clauses 4.4 – 4.6 of the deed of settlement dealt with the disposal of the Property. I reproduce those clauses below:

> 4.4 The Wife shall be at liberty to sell the matrimonial property in the open market at any time and the proceeds of sale shall be applied towards the payment of the following:
>
> - discharge of the housing loan only;
>
> - refund of monies to both [parties'] CPF accounts (with interest) in respect of the amounts withdrawn in relation to the matrimonial property;
>
> - expenses of sale.
>
> The Husband shall personally discharge the Equity loan from his own funds.
>
> 4.5 The proceeds of sale after deducting the aforesaid payments ("net proceeds of sale") shall be given to the Wife absolutely. In such a situation, the Husband's liabilities to the Wife as set out in paragraph 5.3 herein shall be deemed to be fully paid and settled. The Husband shall fully co-operate with the Wife in the sale of the matrimonial property and he shall not make any claim against the matrimonial property or the net proceeds of sale.
>
> 4.6 The Wife shall also be entitled to take over the Husband's share and interest in the matrimonial property on the same terms and conditions as set out in paragraph 4.4 and 4.5 herein.

The "Equity loan" referred to in clause 4.4 was effectively a mortgage – a $650,000 loan that OBL took from OCBC Bank, secured by the Property.

3 OBL had allegedly breached this deed of settlement. This is what the plaintiff alleged, although she went no further to substantiate her allegation. After the alleged breach, the plaintiff filed a writ of divorce, and applied for a mareva injunction. An interim mareva injunction was granted against OBL on 24 March 2012, prohibiting OBL from dealing with or diminishing the value of his assets whether solely or jointly owned, up to the value of $1,500,000. This injunction was to remain in force "until the Trial or further order". On 6 November 2012, the plaintiff and OBL reached an agreement on the ancillary issues, by which OBL agreed to transfer his rights, title and interest in the Property with no consideration or Central Provident Fund refund. On the same day, an order of court (by consent) was entered into based on this settlement agreement. Presumably, at this point, the injunction ceased to be in force. On 16 October 2013, the plaintiff successfully obtained the court's sanction of the transfer of OBL's title to the Property to her.

4 However, between 6 November 2012 and 16 October 2013, OBL had applied for two loans from the defendant. The first loan application was approved by the defendant on 30 January 2013, for $5,000. The second was approved on 4 February 2013, for $3,000. Each loan was for a period of one month. The first was due on 27 February 2013, and the second on 3 April 2013. The defendant claimed it had procured OBL's consent to lodge a caveat against the Property. Its counsel, Mr Shanmugam, argued that this consent was reflected in a written agreement dated 30 January 2013 between OBL (as the sole borrower) and the defendant (as the creditor), the relevant portion of which is produced below:

> Now it is agreed as follows: …
>
> 3. The Borrower is the Registered Proprietor of the land known as of 1 RODYK ST #10-11 SINGAPORE 238212 (the Flat) agrees to repay the Loan borrowed from the Lender from the proceeds of sale for the Flat upon completion of such sale and agrees to assign to the Lender monies from the sale proceeds due for the repayment of the Loan due to the Lender.
>
> 5. The Borrower hereby consents to the Lender lodging a Caveat with the Singapore [Land] Authority against the title of the Flat and confirm that the Lender has an interest in the sale proceeds of the sale of the Flat under Section 115 of the Land Titles Act. The Lender shall on receipt of all monies due and owing to the Lender by the Borrower or on receipt of any undertaking from the Borrower's solicitors on terms acceptable to the Lender withdraw the Caveat.

A separate page, also dated 30 January 2013, addressed to both Singapore Land Registry and the defendant, and signed off by OBL, reads:

> I/We, the undersigned, as the Registered Proprietor of [the Property]:
>
> 1. hereby wholly, unconditionally and irrevocably direct, authorize and consent to the Caveator lodging a Caveat on/against the Property to secure the Caveator's interest in the sale proceeds of the Property to fully repay all loans granted or to be granted by the Caveator to me from time to time;
>
> 2. Hereby wholly, unconditionally and irrevocably direct, authorize and consent to the Registrar to allow the lodgement of a Caveat by the Caveator on/against the Property;

…

5 The plaintiff was unaware of OBL's applications for these loans. OBL was adjudged a bankrupt on 28 March 2013. By this time, OBL had not repaid the defendant, and had hence defaulted on the loans. On 28 May 2013, the defendant lodged a caveat against the Property.

6 On 16 October 2013, when the plaintiff sought to transfer OBL's interest in the Property to her, she found that the defendant's caveat stood in the way. This was because – she argued – the mortgagee, OCBC Bank, required the defendant's caveat to be lifted first. In November 2013, the plaintiff, through her previous solicitor, wrote to the defendant asking it to remove the caveat. The parties corresponded through a series of letters. On 7 January 2014, Mr Shanmugam wrote to the plaintiff stating that the defendant would remove the caveat "upon settlement of the loan of $21,300 (inclusive of legal costs)". This sum of $21,300 was presumably arrived at based on the unpaid principal as well as accumulated interest. On 8 March 2014, Mr Shanmugam again wrote to the plaintiff indicating the defendant was willing to forgo the contractual interest and accept a sum of $9,000 (repayment of the principal sum of $8,000 plus costs of $1,000). By this point, the plaintiff had changed solicitors. Ms Adeline Chong, the plaintiff's present solicitor, responded to Mr Shanmugam indicating that the plaintiff rejected both offers, and was commencing legal action.

7 These were the facts before the court. There were many inconsistencies and unexplained portions. They include the following:

(a) First, how had OBL breached the deed of settlement?

(b) Second, was there a further agreement pursuant to the loan disbursed on 4 February 2013? The defendant's case was that the "agreements" it signed with OBL gave rise to its "interest in land" that formed the basis of its caveat. However, in its evidence (affidavit of Adrian Fun Weng Khoon, director of Prosper Credit Pte Ltd, dated 4 April 2014), it had only tendered one agreement, dated 30 January 2013. Although there was a statement of account (dated 28 November 2013) that seemed to document the 2nd loan in the amount of $3,000, no agreement (for the 2nd loan) was tendered.

(c) Third, had OBL repaid $2,000 of the principal sum owed to the defendant? According to the statement of account (for the second loan of $3,000), OBL had indeed repaid $2,000 on 3 August 2013. However, the defendant's position was that the principal sum of $8,000 was still due.

8 It was on these shaky premises that the plaintiff mounted her case. She came to this court seeking, pursuant to s 127(1) of the Land Titles Act (Cap 157, 2004 Rev Ed), that the caveat be removed. Having heard the plaintiff's and defendant's cases, and having seen the documents produced before the court, I find myself confronted with the following questions:

(a) First, was the contract signed between OBL and the defendant valid?

(b) Second, had OBL and the defendant entered into any further contract (presumably pursuant to the $3,000 loan)? And if so, were those further contracts valid?

(c) Third, if there were any valid contracts, did any of those contracts serve to create an interest in the Property in favour of the defendant, notwithstanding that the plaintiff, as a co-owner, was not informed, and neither was her consent procured?

(d) Fourth, if the defendant did indeed have an interest in the Property when it lodged the

caveat, are there any reasons that justify the removal of the caveat?

9 Notwithstanding the many interesting legal issues that flow from each of these questions, which may have a bearing on home owners and licensed moneylenders alike, I find that this case involves only the first and second questions. In short, my answer to the first question is "yes" and to the second, "no, there were no further contracts".

10 The agreement between OBL and the defendant on 30 January 2013 was the sole document the defendant relied on to argue that it did indeed have an interest in the Property. The defendant did not adduce any further documents to show any further agreements. I hence take it that the agreement dated 30 January 2013 is the only agreement in contention.

11 Before even considering the wording of the parts of the agreement (cited at [4] above) that – the defendant purported – gave the defendant an interest in the Property, it is apparent that the loan was the key subject of the agreement. The loan amount was for $5,000, and the interest was stipulated as 791.61% per annum. Based on the statement of account for the $5,000 loan (dated 28 November 2013) – a document tendered by the defendant itself – a "late interest" of $10,000 had accrued as at 28 November 2013.

12 According to r 11(2) of the Moneylenders Rules 2009 (S 72/2009) read with s 23(6) of the Moneylenders Act (Cap 188, 2010 Rev Ed), the maximum rate of interest for a secured loan granted to an individual whose annual income on the date of the grant of the loan is less than $30,000 is 13%. It is 20% for an unsecured loan. Section 23(1) of the Moneylenders Act allows the court to "re-open" a transaction where it "is satisfied that the interest or late interest charged in respect of the loan is excessive and that the transaction is unconscionable or substantially unfair". In this case, even if the late interest did not amount to 791.61%, as was stated on multiple pages throughout the agreement between OBL and the defendant as the effective interest rate, the statement of account for the $5,000 loan showed – at the very least – that a 200% late interest had accrued. This would have been in excess of the maximum rate of interest allowed by law, assuming OBL was earning less than $30,000 a year as at 30 January 2013. However, his annual income was uncertain. According to his tax assessment for the year 2012, which he submitted to the defendant, he earned $154,501 for the year of assessment 2012. He faced bankruptcy proceedings in November 2012, and was adjudged bankrupt on 28 March 2013. Even if it were the case that he was earning an annual income of more than $30,000 as at 30 January 2013, in which case the stipulated maximum rates of interest in r 11(2) would not be directly relevant, the rate of interest in this case is undoubtedly excessive within meaning of s 23(1).

13 When confronted with such agreements, the court is empowered, by s 23(3)(*b*) of the Moneylenders Act, to "set aside either wholly or in part, or revise or alter, any guarantee or security given or the contract for the loan". Although s 23(3)(*b*) is prefaced by "[i]n relieving the person sued under subsection (2)", by which "person sued" refers to the debtor in a case where the moneylender (creditor) sues the debtor for sums owing, I see no reason why the power prescribed in s 23(3)(*b*) cannot be exercised in this case. In fact, s 23(4) removes any doubt as to the ambit of the power prescribed in s 23(3)(*b*). Section 23(4) reads:

> [a]ny court shall have and may exercise the powers referred to in subsections (1), (2), and (3) in relation to proceedings for relief brought by a borrower, a surety, or any other person liable to repay a loan to a licensee…

In this case, the plaintiff most closely resembles "any other person liable to repay a loan to a licensee", the licensee being the defendant.

14 I am of the view that the interest charged in this case is exorbitant and not just substantially unfair but grossly unfair. Thus, pursuant to s 23(3)(*b*), I hereby set aside the contract for the loan between OBL and the defendant. That the defendant was (allegedly) "willing to forgo the interest" was inconsequential. Accordingly, I allow the plaintiff's application in this case.