

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2021] SGHC 136

Originating Summons No 1107 of 2020 (Registrar's Appeal No 49 of 2021)

Between

DBS Bank Ltd

... Plaintiff

And

- (1) Lam Yee Shen
- (2) Teo Sai Choo Regina

... Defendants

GROUND OF DECISION

[Civil Procedure] — [Summary judgment] — [Triable issue under Orders 14 and 83 of the Rules of Court]
[Credit And Security] — [Mortgage of real property] — [Order for possession]

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DBS Bank Ltd
v
Lam Yee Shen and another

[2021] SGHC 136

General Division of the High Court — Originating Summons No 1107 of 2020
(Registrar's Appeal No 49 of 2021)

Aedit Abdullah J

24 March 2021

10 June 2021

Aedit Abdullah J:

1 In this appeal, the plaintiff sought to enforce the security granted to it in the form of property mortgaged to it by the defendants. The defendants resisted it on flimsy grounds below and added a further bare allegation of fraud on appeal before me. The defendants have now appealed further.

Background

2 The first and second defendants obtained a Housing Loan Facility (the “Facility”) from the plaintiff, comprising a Housing Loan on 1 April 1999 and a Term Loan on 26 July 2012.¹ Both loans were secured by a mortgage over the

¹ Leong Lan Fern's Supplementary Affidavit dated 10 February 2021 (“LLF-2”) at para 2; Leong Lan Fern Affidavit dated 3 November 2020 (“LLF-1”) at pp 15–21 and pp 29–35.

whole of Lot No MK 17-U68155W (Type SSCT Volume 937 Folio 176) comprising the property known as 20 Jalan Raja Udang #08-03 Global Ville Singapore 329192 (the “Property”).² As the defendants defaulted on payments required under the Facility, the plaintiff issued two letters on 27 August 2020 informing the defendants that it had recalled the Facility and demanded payment of outstanding sums within seven days.³ By another three letters on 27 August 2020, the plaintiff informed the defendants that they were required to deliver vacant possession of the Property within one month.⁴ As the defendants did not surrender vacant possession,⁵ the plaintiff made an application on 3 November 2020, for an order for, *inter alia*, possession of the Property under O 83 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) (“ROC”).⁶ A certificate (the “Certificate”) provided by the Vice-President of the plaintiff indicated the outstanding sums payable under the Housing Loan and Term Loan as at 3 November 2020.⁷

Procedural history

3 An order-in-terms of prayers 1–3 in HC/OS 1107/2020 was granted by the Assistant Registrar on 23 February 2021.⁸ As this was an appeal from the decision of the Assistant Registrar, the matter was heard afresh.

² LLF-1 at para 3, p 16 (Clause 2a), p 30 (Clause 1g) and pp 57–67.

³ LLF-1 at para 5 and pp 77–80.

⁴ LLF-1 at para 7 and pp 82–84.

⁵ LLF-1 at para 7.

⁶ HC/OS 1107/2020.

⁷ LLF-1 at p 86.

⁸ HC/ORC 1215/2021 dated 23 February 2021.

Summary of the defendants' arguments on appeal

4 On appeal, the defendants alleged that their signatures on the Instrument of Mortgage dated 12 March 2004 (the “2004 mortgage document”) had been forged.⁹ In this regard, the defendants took issue with the evidence of the mortgage and documentation being hearsay,¹⁰ and pointed out discrepancies in the documents, namely, the copy of the mortgage document forwarded to the defendants back in 1999 (the “1999 mortgage document”) and the 2004 mortgage document.¹¹ Allegations of presumed undue influence,¹² and discrepancies as regards the Subsidiary Strata Certificate of Title (“SSCT”) of the Property,¹³ were also raised. These matters, the defendants argued, ought to be investigated by way of trial or cross-examination.¹⁴ The defendants also contended that there had been overcharging by the plaintiff.¹⁵

Summary of the plaintiff's arguments on appeal

5 Relying on *Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes and Another* [2007] SGHC 84 (“*Sim Lian*”), the plaintiff submitted that O 14 principles ought to apply to the present application under O 83 ROC.¹⁶ Accordingly, the defendants must raise disputes that ought to be tried to repel

⁹ Defendants' Submissions dated 22 March 2021 (“DS”) at paras 1–2; Defendants' Submissions (Addendum) dated 23 March 2021 (“DSA”) at para 6.

¹⁰ DSA at paras 4–5.

¹¹ DSA at para 6.

¹² DS at para 5.

¹³ DSA at paras 12–14.

¹⁴ DS at paras 5 and 8; DSA at para 13.

¹⁵ DSA at paras 8–10.

¹⁶ Plaintiff's Supplementary Written Submissions dated 24 March 2021 (“PSS”) at pp 1–7.

judgment for the plaintiff.¹⁷ On the facts, however, no triable issues or disputes that ought to be tried were raised.¹⁸ The defendants did not dispute that they had taken loans from the plaintiff and had signed duplicate copies of the mortgage documents.¹⁹ The bare assertion of forgery was raised belatedly on appeal,²⁰ and stood in juxtaposition to the defendants' past conduct.²¹ Likewise, the defendants' allegation of presumed undue influence was new and unsupported.²² Explanations were provided for the supposed discrepancies in the security documents,²³ and alleged errors in the SSCT.²⁴ As for the issue of overcharging, the plaintiff explained that all repayments by the defendants had been accounted for in the calculation of the outstanding amount.²⁵

The decision

6 I accepted, as argued for by the plaintiff,²⁶ that a standard similar to O 14 ROC should apply to originating summons ("OS") proceedings under O 83 ROC. Here, I was satisfied that the plaintiff had made out a *prima facie* case. The defendants had also not raised any triable issues, and neither should the matter be otherwise resolved with the taking of evidence.

¹⁷ PSS at p 6.

¹⁸ Plaintiff's Submissions dated 17 March 2021 ("PS") at pp 26–28; PSS at p 22.

¹⁹ PS at pp 8 and 26.

²⁰ PSS at pp 7–8 and 15.

²¹ PSS at pp 9–14.

²² PSS at pp 17–22.

²³ PS at pp 25–28.

²⁴ PS at pp 18–23.

²⁵ PS at pp 15–18.

²⁶ PSS at pp 1–7.

7 The forgery allegation came late, was not substantiated and was inconsistent with the defendants' past behaviour. The fact that the defendants allegedly filed a police report on 16 March 2021, suggesting that the 2004 mortgage document was forged, cannot assist them.²⁷ It was therefore a bare allegation only. As for the other matters, including the supposed inconsistencies in the mortgage documents, overcharging and the assertion of undue influence, I also did not find anything in these to raise anything close to a triable issue. In the circumstances therefore, the appeal was dismissed, and the order below affirmed.

Analysis

The application

8 In HC/OS 1107/2020, the plaintiff sought to enforce the mortgage through an application for an order for possession of the Property under O 83 ROC. Despite the resistance of the defendants, an order-in-terms of prayers 1–3 was granted by the Assistant Registrar below and affirmed by me on appeal.

9 Order 83 rule 1(1) of the ROC reads:

1.—(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs:

...

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;

²⁷ DS at para 1.

The applicable standard for OS proceedings under O 83

10 The adoption of a triable issue standard analogous to that under O 14 was put forward by the plaintiff's counsel and accepted by defendants' counsel. The plaintiff referred to the decision of Assistant Registrar Paul Tan in *Sim Lian* at [29],²⁸ in which it was held that O 14 principles can be applied to O 81 matters as the latter is also intended to be summary in nature. The plaintiff argued that the same approach should be taken in respect of its application under O 83, as the approach is clear and supported by an abundance of case law interpreting O 14, and both O 14 and O 83 applications are largely founded on documents with few factual disputes such that a trial would be unnecessary.²⁹

11 I accepted that proceedings begun by OS under O 83 are summary in nature. While the rules governing OS proceedings under O 83 are silent, I accepted that the threshold of a triable issue in O 14 ought to apply to such proceedings. As a matter of practice, much like the proceedings for possession of land under O 81, where little evidence is raised, a timely determination in favour of the plaintiff should follow. Such an approach safeguards financial and commercial certainty by enabling mortgagees to satisfy their security, in as prompt a manner as possible, where justified. The interests of the mortgagors are protected as the matter will proceed to determination at trial if the requisite standard is met. As in the case of O 14, the threshold of a triable issue being raised balances the need to not prolong matters unnecessarily where the case is overwhelming, with the need to allow the defendant his day in court at least where some evidence is forthcoming from him.

²⁸ PSS at pp 1–5.

²⁹ PSS at pp 5–6.

12 There are differences in structure and scheme between O 14 and O 83 (and indeed with O 81). O 14 expressly provides that judgment may result for the plaintiff, while O 83 posits an OS hearing or a trial. Nonetheless, despite this difference, O 83 permits the court to determine the matter on affidavit evidence, generally without cross-examination when the application is begun by OS, leading to a result similar to a summary judgment. With that in mind, the adoption of an analogous standard to O 14 should not pose any conceptual difficulties, though it may be that there will have to be some other modifications. For instance, granting a defendant conditional leave to defend is not contemplated under O 83, though the court could conceivably order proceedings to continue as an OS with cross-examination, for instance.

13 Transposing the guidance from O 14 cases to the present situation:

- (a) The plaintiff must first show a *prima facie* case for summary judgment under O 14: see *Singapore Court Practice 2021* (Jeffrey Pinsler gen ed) (LexisNexis, 2021) (“*Singapore Court Practice*”) at para 14/2/1. Similarly, in an O 83 OS action for possession of a mortgaged property, the bank must first show a *prima facie* entitlement to the possession of the property, presumably on the basis of mortgage documents showing that a mortgage exists, and that there has been a breach of the terms of the mortgage entitling the mortgagee to possession. If the plaintiff is unable to show a *prima facie* case, its application will be dismissed at the outset.
- (b) If a *prima facie* case has been established by the plaintiff in an O 14 application, the defendant must, in order to repel summary judgment, raise an issue or question in dispute which ought to be tried, or show that there ought for some other reason to be a trial.

In particular, a bare allegation does not raise a triable issue. There must be some cogent evidence to support the defendant's assertions: *Calvin Klein, Inc and another v HS International Pte Ltd and others* [2016] 5 SLR 1183 at [45]; *B2C2 Ltd v Quoine Pte Ltd* [2018] 4 SLR 1 ("B2C2") at [5]; *Singapore Court Practice* at para 14/3/2. The same approach ought to be taken for an OS application for possession of a mortgaged property under O 83.

- (c) The court in *MP-Bilt Pte Ltd v Oey Widarto* [1999] 1 SLR(R) 908 at [13] emphasised the approval in *Hua Khian Ceramics Tiles Supplies Pte Ltd v Torie Construction Pte Ltd* [1991] 2 SLR(R) 901 at [21] for a robust approach to be taken in commercial and construction cases where cash flow is the life blood in making commerce work. An equally robust approach ought to be taken for OS proceedings under O 83, which gives effect to security underpinning the provision of finance for those seeking help to purchase properties. Without a robust approach protecting the effectiveness of security interests, would-be purchasers would not be able to find financing at all.

14 While O 14 has attracted a considerable amount of case authority on the language used and the precise test, it is not necessary to my mind in this context to import all of the principles and rules underlying the grant of summary judgment under O 14, to O 83. It is sufficient, for the moment, to adopt the standard of a triable issue in O 14, such that a summary determination of OS proceedings under O 83 is appropriate where no triable issue is raised. After all, O 83 does not completely replicate the language used in O 14. For instance, where a mortgage action is started by a writ, O 83 r 4(1) ROC permits judgment

in default of defence to be entered only with the leave of court; in contrast, O 14 r 1 ROC requires the defendant to serve its defence before the plaintiff may apply for summary judgment. What is procedurally permissible may thus differ under O 83 and O 14, and principles governing O 14 applications ought not be imported into O 83 if they would be incongruent with its plain language.

Application to the facts

15 The plaintiff had established a *prima facie* case that it was entitled to the possession of the Property. The defendants raised a number of allegations, which fell short of the necessary level to raise any triable issue. The allegations made were bare, with little support given in evidence.

Prima facie case

16 The plaintiff had made out a *prima facie* case, with its documentation showing the existence of a mortgage down the years, covering various facilities, as well as account statements proving that the defendants had defaulted on their monthly instalments. Various allegations in the defendants' affidavits going up against these included discrepancies in the security documents,³⁰ wrongful deductions,³¹ errors in the title deed,³² and changes in the Houseowners Master Policy ("Insurance Policy").³³ The last issue on the Insurance Policy fell away on appeal, and was not addressed in the defendants' written submissions before me. In any event, as will be addressed below at [27]–[32], I did not consider

³⁰ Lam Yee Shen's Second Affidavit dated 20 January 2021 ("LYS-2") at para 8.

³¹ Lam Yee Shen's First Affidavit dated 23 December 2020 ("LYS-1") at paras 11, 14 and 16–17; DSA at paras 8–10.

³² LYS-1 at para 26; LYS-2 at para 7; DSA at paras 12–14.

³³ LYS-1 at para 27.

these matters as raising any triable issue at all: the documents were, in short order, as explained by the plaintiff to my satisfaction, largely in order.

17 The plaintiff had sufficiently exhibited documents supporting the existence of loans that were secured by a registered mortgage. The letters of offer dated 1 April 1999 and 26 July 2012 indicated that the Housing Loan and Term Loan taken out by the defendants were secured by a legal mortgage over the Property.³⁴ The 2004 mortgage document evidenced this mortgage over the Property, with the defendants named as mortgagors, and the plaintiff as mortgagee.³⁵ This mortgage was registered on 1 April 2004, as reflected on the 2004 mortgage document and SSCT.³⁶ Various facility letters modified the interest rates over the years,³⁷ but this did not affect the plaintiff's claim in the present case. In fact, these letters confirmed that the Facility was secured by this mortgage.³⁸

18 The account statements covering the relevant years verified the plaintiff's claim that the defendants had defaulted on their monthly instalments between 1 December 2019 and 1 November 2020,³⁹ hence entitling the plaintiff to cancel the Facility and demand immediate repayment of outstanding sums pursuant to the plaintiff's Standard Terms and Conditions.⁴⁰ Clause 2(n) of the Memorandum of Mortgage stipulated that the moneys secured shall be due on

³⁴ LLF-1 at pp 15–21 (see Clause 2a on p 16) and pp 29–55 (see Clause 1g on p 30).

³⁵ LLF-1 at p 57.

³⁶ LLF-1 at p 67; LLF-2 at pp 47–48.

³⁷ LLF-1 at pp 10–13, pp 22–25 and pp 26–28; LLF-2 at para 4(i).

³⁸ LLF-1 at p 11 (3 August 2012 Letter), p 23 (9 March 2010 Letter) and p 27 (3 March 2006 Letter).

³⁹ LLF-2 at para 34, pp 139–144 and 167–171.

⁴⁰ LLF-1 at p 11 (applicability to Housing Loan), p 15 (applicability to Term Loan), p 47 (Clause 21.1.1) and p 48 (Clause 22.1.2).

demand, and if a demand for payment is not complied with within seven days after service thereof on the mortgagor, the plaintiff shall be entitled to exercise its statutory powers of a mortgagee.⁴¹ In this regard, the plaintiff sent two letters on 27 August 2020 informing the defendants that it had recalled the Facility and demanded that unless the outstanding amount was repaid within seven days, the plaintiff would exercise its powers under the mortgage.⁴² This included the power of entry into possession under s 75(1) Land Titles Act (Cap 157, 2004 Rev Ed) (“LTA”), which the plaintiff was entitled to exercise since it had given the defendants the requisite s 75(2) LTA notice via another three letters dated 27 August 2020,⁴³ and the defendants had defaulted on the loan.⁴⁴ Section 75 LTA is applicable to the Property by virtue of s 4 Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) (“LTSA”).

19 As against this, the defendants contended that there was incomplete evidence – information as to how the plaintiff became the mortgagee constituted hearsay evidence, since it was provided by the plaintiff’s current solicitors rather than the conveyancing lawyers involved in the transaction back then.⁴⁵ However, the mortgage documents were the very evidence of the mortgage terms. The 2004 mortgage document was also the very evidence of the fact that the defendants’ signatures were on a mortgage document that specified the plaintiff as the mortgagee of the Property;⁴⁶ they were not hearsay. Further, the

⁴¹ LLF-1 at p 73.

⁴² LLF-1 at pp 77–80.

⁴³ LLF-1 at pp 82–84.

⁴⁴ LLF-2 at pp 139–144 and 167–171.

⁴⁵ DSA at paras 4 and 5.

⁴⁶ LLF-1 at pp 57 and 65.

very fact that registration of the mortgage had been effected can be evidenced by the SSCT: ss 36(2)(a) and 4 LTA read with s 4 LTSA.

20 Furthermore, as noted by the plaintiff,⁴⁷ the defendants had been servicing the mortgage all these years.⁴⁸ It was also conceded by the defendants at first instance that they did not dispute the mortgage, and did not dispute taking the loans.⁴⁹ This was not a situation in which the defendants denied taking any benefit at all.

Absence of triable issues

(1) Allegation of forgery

21 The defendants' allegation of forgery is a bare one.

22 Again in the context of O 14, it has been noted that the improbability of bare assertions will weigh against finding that a triable issue has been raised: *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] 5 SLR 184 at [16]. There must be cogent evidence supporting the defendant's position: *B2C2* at [5]. In other words, if the allegation of forgery is clearly not credible at all, there is no fair or reasonable probability of a real defence: *National Westminster Bank plc v Daniel and others* [1993] 1 WLR 1453 at 1457.

23 No credible or cogent evidence was given to support the forgery allegation. The alleged filing of a police report only in March 2021, just before the Registrar's Appeal, did not assist at all: a police report was only an assertion by the person making it. The fact that a criminal penalty might attach for a false

⁴⁷ PSS at p 13.

⁴⁸ LLF-2 at pp 75–171.

⁴⁹ Notes of Evidence ("NOE") 23 February 2021 at p 3 lines 19–22; LYS-1 at para 20.

report was of little effect in cases such as these, where the distant and probably remote prospect of any criminal prosecution was not likely to deter the making of bare allegations.

24 The supposed inconsistencies in the mortgage documents raised by the defendants had been properly addressed by the plaintiff (see below at [27]–[29]). On the other hand, as argued by the plaintiff,⁵⁰ the defendants’ allegation of forgery was bare, with no explanation of possible beneficiaries or perpetrators, or any other telling details which would have lent some force to the assertion.

25 The forgery allegation also lost credibility in light of the long duration of the mortgage. If indeed there was a forgery, the action of the defendants in paying the instalments all these years since its commencement in 1999, and accepting various letters of offer stating that the loans were secured by the mortgage,⁵¹ sat very oddly with that. Two decades had passed without any complaint. One would have expected them to raise a hue and cry many years ago, if the forgery allegation was true. The very fact, as argued by the plaintiff,⁵² that the forgery was not raised early in the proceedings, or at first instance, also raised significant doubt as to its veracity. All that was mentioned at first instance was a vague allusion to inconsistencies in the documents.⁵³ The fact that the defendants had not explained the inconsistency between their past conduct and

⁵⁰ PSS at p 15.

⁵¹ LLF-1 at pp 11 and 13 (3 August 2012 Letter), pp 16 and 21 (26 July 2012 Letter), pp 23 and 25 (9 March 2010 Letter), pp 27–28 (3 March 2006 Letter), pp 30 and 35 (1 April 1999 Letter).

⁵² PSS at p 8.

⁵³ See NOE 23 February 2021 at p 2 lines 26–28 and p 3 lines 10–28; Defendant’s Submissions before Registrar dated 22 February 2021 (“D’s Registrar Subs”) at para 2.

their allegation of forgery, or raised other evidence to support this allegation, must mean that the allegation was wholly unsupported. It was also telling that the defendants did not adduce the police report properly by way of an affidavit, and only made reference to it in submissions.⁵⁴

(2) Inconsistencies

26 The defendants also pointed to supposed inconsistencies in the mortgage documents,⁵⁵ including the name of the bank,⁵⁶ as well as discrepancies as regards the SSCT and the Insurance Policy.⁵⁷ They also claimed that the plaintiff had made deductions in excess of monthly instalments due under the Facility.⁵⁸

27 The discrepancies between the 1999 and 2004 mortgage documents raised by the defendants were properly and adequately addressed by the plaintiff. The plaintiff changed its name in 2003, from “The Development Bank of Singapore Ltd” to “DBS Bank Ltd”. Judicial notice could be taken of this fact. At common law, the court can take judicial notice of facts, beyond ss 59(1) and 59(2) Evidence Act (Cap 97, 1997 Rev Ed), which are so notorious or so clearly established that they are beyond the subject of reasonable dispute: *Zheng Yu Shan v Lian Beng Construction (1988) Pte Ltd* [2009] 2 SLR(R) 587 (“*Zheng Yu Shan*”) at [24] and [27]. A fact is considered notorious or clearly established if its existence is accepted by the public without qualification or contention: *Zheng Yu Shan* at [27]. The change in name of the plaintiff, is a matter which

⁵⁴ DS at p 2; DSA at p 3.

⁵⁵ DS at para 6; DSA at para 6.

⁵⁶ DSA at para 6i.

⁵⁷ DSA at paras 12–13; LYS-1 at para 27.

⁵⁸ DSA at paras 8–10.

would be expected to be of some notoriety. The variation was also sufficiently documented by the plaintiff, in its letters of offer and account statements.⁵⁹

28 Differences in the mortgagors' address and other slight discrepancies as to the format of the 1999 and 2004 mortgage documents, had also been accounted for by the plaintiff. At the time of the Housing Loan in 1999 the legal title of the Property had not been issued yet. Therefore, the mortgage was executed in escrow, meaning the legal details of the Property were left blank.⁶⁰ It was only upon legal completion of the defendants' purchase of the Property, that the 2004 mortgage was registered.⁶¹ A change in the mortgagors' address and minor formatting details between the execution and registration of the mortgage, was nothing alarming and not indicative of forgery.

29 The defendants took issue with how the signatures in their copy of the 2004 mortgage document appeared different from the signatures on the plaintiff's copy.⁶² In this regard, the plaintiff had adequately explained, on affidavit, that security documents were prepared in duplicate in case one set was inadvertently misplaced.⁶³ Hence, the defendants and the plaintiff had executed two sets of mortgage documents, resulting in slight differences in signatures on the defendants' copy and the plaintiff's copy.⁶⁴ That there had been duplicate

⁵⁹ LLF-1 at pp 29–35 (1 April 1999 Letter) contrasted with pp 26–28 (3 March 2006 Letter); LLF-2 at pp 83–85 (Statement of Account dated 1 January 2003) contrasted with pp 86–88 (Statement of Account dated 1 January 2004).

⁶⁰ LLF-2 at para 26.

⁶¹ LLF-2 at para 27 and p 73.

⁶² DSA at para 6ii; LYS-2 at paras 8ii–8iii and p 29; LLF-1 at p 65.

⁶³ LLF-2 at para 25.

⁶⁴ LLF-2 at para 26.

copies of the 2004 mortgage document was also evidenced by a letter from the plaintiff's solicitors dated 7 May 2004.⁶⁵

30 The defendants also claimed that the SSCT was erroneous: it did not refer to the Property,⁶⁶ and the Mukim number and the share value indicated were wrong.⁶⁷ In response, the plaintiff adduced an email from the Singapore Land Authority dated 5 February 2021,⁶⁸ results of its Lot History Search on Singapore Land Authority's Lot Base System on 8 February 2021,⁶⁹ and a letter from the Building & Construction Authority dated 22 November 2000,⁷⁰ which showed, to my satisfaction, that the SSCT was not erroneous.

31 In the defendants' affidavits, there was an allegation that the Insurance Policy was varied without the defendants' knowledge,⁷¹ but this was not taken up in submissions on appeal. This allegation pertaining to the Insurance Policy, in any event, had no bearing on the plaintiff's present application to enforce its mortgage.

32 As for the issue of excess deductions, the plaintiff accepted that from time to time it had received CPF Board remittances in excess of the monthly instalment.⁷² However, all payments from the defendants went towards reducing

⁶⁵ LLF-2 at p 73.

⁶⁶ DSA at para 12; LYS-1 at para 26; LYS-2 at para 7iii.

⁶⁷ LYS-2 at para 7.

⁶⁸ LLF-2 at para 17 and p 70.

⁶⁹ LLF-2 at para 15 and pp 62–63.

⁷⁰ LLF-2 at para 14 and pp 59–60.

⁷¹ LYS-1 at para 27; LYS-2 at para 9.

⁷² LLF-2 at para 10 and p 43; NOE 23 February 2021 at p 4 line 30–p 5 line 2.

the outstanding amount payable,⁷³ except when the plaintiff rejected the receipt of the excess payments and made a refund.⁷⁴ All these were supported by the account statements,⁷⁵ and there was nothing to impugn the accuracy of the outstanding sums indicated on the Certificate.⁷⁶ Hence, the plaintiff was entitled to enforce its mortgage when the defendants defaulted on their instalments.

(3) Undue influence

33 Another new allegation made in the defendants' submissions was that the presumption of undue influence was raised because the same lawyers acted for both the plaintiff and defendants in this mortgage.⁷⁷ As argued by the plaintiff,⁷⁸ the case of *Malayan Banking Berhad v Sivakolunthu Thirunavukarasu and others* [2008] 1 SLR(R) 149, cited by the defendants for this proposition, involved a situation distinct from the present case, where the same lawyers were acting for both the mortgagor and mortgagee. The role of the lawyer in the latter situation is purely concerned with the conveyancing and preparation of mortgage documents, with no advice being given particularly to the mortgagors. That perhaps underlies The Law Society of Singapore's Practice Direction 7.2.5 (1 June 2018), cited by the plaintiff,⁷⁹ which implicitly accepts this practice. In any event, the supposed undue influence occurred a long time ago. The passage of time puts substantial doubt on the veracity of the defendants' allegation here as well.

⁷³ LLF-2 at para 11.

⁷⁴ LLF-2 at para 10, pp 43 and 99.

⁷⁵ LLF-2 at pp 75–171 read with D's Registrar Subs at pp 17–22.

⁷⁶ LLF-1 at p 86.

⁷⁷ DS at para 5.

⁷⁸ PSS at pp 21–22.

⁷⁹ PSS at p 22.

Costs

34 I ordered the defendants to pay S\$7,000 in costs to the plaintiff.

Conclusion

35 The scattershot, late and grasping allegations by the defendants seemed redolent of an attempt to stave off, by any means possible, the plaintiff's application to enforce the mortgage. There was a clear absence of any indication that the defendants' allegations had any truth to them. The whole past conduct of the defendants certainly belied their allegations. In the face of this, the defendants should have put in some evidence to explain the stark inconsistency between their past conduct and their allegations in the present case, but they did not do so. Given that absence of a crucial explanation, the only conclusion that could be reached was that their allegations were not at all real, and only intended to delay the mortgagee's remedies.

Aedit Abdullah
Judge of the High Court

Koh Yeong Hung Sasha (Adsan Law LLC) for the plaintiff;
Dhanwant Singh (S K Kumar Law Practice LLP) for the first and
second defendants.