# Standard Chartered Bank v Elang Mas Enterprise Pte Ltd and Others
# [2003] SGHC 181

**Case Number** : OS 1541/2002

**Decision Date** : 23 August 2003

**Tribunal/Court** : High Court

**Coram** : MPH Rubin J

**Counsel Name(s)** : Lee Eng Beng and Lynette Koh (Rajah & Tann) for the plaintiffs; Tan Cheow Hung (Y F Tan & Co) for the first and second defendants; Vivian Chew (Assomull & Partners) for the third and fourth defendants

**Parties** : Standard Chartered Bank — Elang Mas Enterprise Pte Ltd; Omnilite Investment & Trading Pte Ltd; Mira Nathania Halim; Indah Nathania Tantio

1 This was an appeal by the defendants against the decision of the Senior Assistant Registrar Mr Toh Han Li given on 30 December 2002 when he ordered amongst others the following:-

> (a) the delivery by the first defendant and all others in occupation to the plaintiffs of possession of two properties known as 9 Ardmore Park, #06-04, Singapore 259945 ('the first property') and 9 Ardmore Park, #07-04, Singapore 259955 ('the second property'); and
>
> (b) there be payment by the defendants to the plaintiffs of the various sums owed to the plaintiffs under the banking facilities granted to the first and second defendants.

2 The defendants' appeal against the said decision was heard by me and at the end I dismissed the appeal with costs. My reasons now follow.

***Background facts***

3 The plaintiffs are one of the leading bankers in this part of this world. The first and second defendants are and were, at all material times, customers of the plaintiffs. The first defendants are the registered proprietors of the said properties which were purchased for S$2,383,603 and S$2,409,869 respectively. The third and fourth defendants are the directors and shareholders of the first and second defendants as well as of an Indonesian tyre manufacturing company known as PT Elangperdana Tyre Industry. According to the defendants, the first defendants were acquired for the purposes of property investment in Singapore and the second defendants were the procurement arm of the said PT Elangperdana Tyre Industry, for banking facilities in Singapore. Part of the purchase price of the said properties was funded through a facility ('the first facility') granted by the plaintiffs.

***Term loan facilities***

4 In this regard, the documents in relation to the said first facility - a term loan - comprised: (a) a letter of offer dated 30 March 2000 from the plaintiffs addressed to the first defendants; and (b) a subsequent letter of offer dated 6 July 2000 from the plaintiffs also addressed to the first defendants varying the terms contained in the first letter of offer. The purport of the second letter was to restructure the earlier offer and to grant additional facilities to the first defendants.

5 As the present dispute seemed to revolve around the litigants' respective rights and obligations, it would be necessary, at the outset, to make reference to some of the salient terms of the said letters of offers concerning the term loan facilities. Insofar as is material the first letter of offer dated 30 March 2000 contained the following preamble and terms:

30 March 2000

…

Elang Mas Enterprise Pte Ltd

....

(Attn: Ms Indah Nathania Tantio)

…

FACILITY LETTER

Mortgage of

1) Blk 1 Ardmore Park #06-04 Singapore 259945 ('The Property 1')

2) Blk 1 Ardmore Park #07-04 Singapore 259945 ('The Property 2')

Standard Chartered Bank ("the Bank") is pleased to confirm its willingness to make available to you the banking facilities ("facilities") outlined below, ***subject to the terms and conditions below and in the Bank's Standard Terms and Conditions (Form No. 338-1198) attached, both of which are subject to amendment from time to time at the Bank's sole discretion***, and to the satisfactory completion of documentation. For the avoidance of doubt, in the case of any inconsistency between this Facility Letter and the Standard Terms and Conditions, the terms and conditions set forth herein shall prevail. (Highlight added)

FACILITIES

Type of Facility: Term Loan

Loan Amount : USD2,774,000.00 ("Optional Currency").

Tenure: 300 months from the date of first disbursement of the Term Loan.

Purpose: To solely finance the purchase of 'The Property 1' and 'The Property 2'.

Interest rate: Interest at Bank's SIBOR plus 2% per annum payable monthly in arrears to the debit of your USD current account.

…

Repayment: Repayable in 299 equal monthly instalments (excluding interest) of USD9,247.00 and a final instalment of USD9,147.00 (excluding interest).

…

SECURITY

The availability of the facilities offered herein is subject to your provision of the following duly executed security documents in such form and substance as are satisfactory to the Bank:-

First legal all monies mortgage/assignment on the "Property 1" in favour of the Bank, the Bank having been satisfied that the 'Property 1' is good and acceptable security in all respects. The 'Property 1' is to be registered in the name of Elang Mas Enterprise Pte Ltd.

First legal all monies mortgage / assignment on the "Property 2" in favour of the Bank, the Bank having been satisfied that the "Property 2" is good and acceptable security in all respects. The 'Property 2' is to be registered in the name of Elang Mas Enterprise Pte Ltd.

…

SPECIAL CONDITION

1) The aggregate Current Market Value (CMV) of the above mortgaged properties must not be less than SGD9,000,000.00 at all times during the currency of the Facilities.

…

Acceptance

If you are agreeable to the above terms and conditions, please confirm your acceptance by signing and returning the duplicate copy of this Facility Letter within fourteen (14) days from the date hereof, after which time our offer will lapse unless an extension is requested for by you and agreed to by the Bank.

We are pleased to make this offer of banking arrangements and look forward to receiving your formal acceptance in due course.

…

6 The said offer and the terms stated in it were unconditionally accepted by the first defendants.

7 The second letter of offer dated 6 July 2000 was, as I mentioned earlier, for the purposes of restructuring the facility granted under the first letter of offer. Under the second offer, the earlier term loan in the sum of US$2,774,000 was restructured as Term Loan 1 for the sum of S$2,383,603 for the first property and Term Loan 2 for the sum of S$2,409,869 for the second property.

***Overdraft and trade facilities***

8 By a letter of offer dated 23 September 1999, the plaintiffs also granted the second defendants overdraft facility of USD50,000 and a Trade facility of USD200,000. By a letter of offer dated 3 April 2000, the plaintiffs increased the Trade facility to USD1,400,000. By a letter dated 6 June 2000, the plaintiffs incorporated additional terms to the letter of offer dated 3 April 2000. By a letter of offer dated 10 April 2001, the plaintiffs further increased the Trade facility to USD2,000,000 with the overdraft facility of USD50,000 covered within this limit (the second facility). The second facility was subject to the terms and conditions stated in the letters of offer, which said terms and conditions were duly accepted by the second defendants. Insofar as is material, the following segments in the said letters of offers in relation to the second facility require highlighting:

(a) LETTER DATED 23 SEPTEMBER 1999

Banking arrangements

Standard Chartered Bank (the "Bank") is pleased to confirm its willingness *to make available to Omnilite Investment & Trading Pte Ltd (the "Customer") the* ***uncommitted*** *banking facilities (the "Facilities")* outlined below on the following terms and conditions, subject to the Bank's Standard Terms and Conditions, as set out in Form 338-1198 attached hereto, and to the satisfactory completion of documentation:- (highlight and bold lettering added)

Availability clause:

In accordance with normal banking practice, the Facilities are made available ***solely at the discretion of the Bank and are subject to repayment on demand by the Bank***.

Without prejudice to this obligation of the Customer, the Facilities shall be subject to review by the Bank from time to time.

(highlight and bold lettering added)

(b) LETTER OF OFFER DATED 3 APRIL 2000

Banking arrangements

(same as in letter dated 23 September 1999)

Security

Security for the above facilities and for facilities which may be extended by the Bank to the Customer from time to time:-

1) Fresh Charge over cash deposits of USD250,000/- and SGD600,000/- in the name of Indah Nathania Tantio held with the Bank.

2) Fresh second all monies mortgage over freehold residential properties situated at Blk 1 #06-04 and 07-04, Ardmore Park in the name of Elang Mas Enterprises Pte Ltd. Supporting Board Resolution to be held.

Fire Insurance policies covering the above properties for the full reinstatement value with the Bank's interest indicated thereon (including mortgagee, non-cancellation and reinstatement value clauses) and premium paid receipts are to be lodged with the Bank.

3) Fresh all monies guarantee to be signed under seal by the following persons, subject to the Laws of Singapore:

Mira Nathania Halim

Indah Nathania Tantio

Conditions

1) The Customer is to maintain a minimum networth of SGD200,000/- at all times during the currency of the Facilities.

(Networth is defined as the sum of balances in paid-up capital and retained earnings but excluding

revaluation reserves and intangible assets such as debts owed by the directors of the Customer.)

2) The aggregate Current Market Value (CMV) of the above mortgaged properties must not be less than SGD9,000,000/- at all times during the currency of the Facilities.

The advance to both Elang Mas Enterprises Pte Ltd and the Customer must not exceed at all times the combined sum of (i) USD deposits, (ii) 90% of the USD equivalent of the SGD deposits and (iii) 70% of the USD equivalent of CMV of the above mortgaged properties at the Bank's prevailing exchange rate or USD4,224,000/- whichever is lower. Otherwise additional (top-up) security acceptable to the Bank are to be pledged to cover the shortfall or the limits reduced accordingly.

Availability clause

(Same as in letter dated 23 September 1999 (*supra*)

(c) LETTER DATED 6 JUNE 2000

Banking Arrangements

We advise that the Facilities made available to the Customer shall continue in force on the same terms and conditions as detailed in our Facility Letter dated 03/04/2000 except for the amendment to Security No. 1) indicated below:

Security

1) Fresh registered charge over cash deposits of USD250,000/- and SGD600,000/- in the name of the Customer to be held with the Bank. Supporting board resolution to be held.

(d) LETTER DATED 10 APRIL 2001

Banking Arrangements

(same as in letter dated 23 September 1999 (*supra*)

Security

Security for the above Facilities and for facilities which may be extended by the Bank to the Customer from time to time:-

1) Existing Charge over cash deposits of USD250,000/- and SGD600,000/- in the name of Customer held with the Bank. …

2) Existing second all monies mortgage over freehold residential properties situated at Blk 1 #06-04 and 07-04, Ardmore Park in the name of Elang Mas Enterprises Pte Ltd. …

Fire Insurance policies covering the above properties for the full reinstatement values with the Bank's interest indicated thereon (including mortgagees, non-cancellation and reinstatement value clauses) and premium paid receipts are to be lodged with the Bank.

3) Existing all monies guarantee signed under seal by the following persons, subject to the Laws of Singapore:

Mira Nathania Halim

Indah Nathania Tantio

Conditions

1) The Customer is to maintain a minimum networth of SGD200,000/- at all times during the currency of the Facilities.

(Networth is defined as the sum of balances in paid-up capital and retained earnings and reserves, less revaluation surplus and intangible assets such as debts owed by the directors of the Customer).

2) The aggregate Current Market Value (CMV) of the above mortgaged properties must not be less than SGD9,000,000/-. In the event of shortfall in (Current Market Value) of the said properties, the Customer is to provide additional security acceptable to the Bank.

(iv) Availability clause

(same as in letter dated 23 September 1999 (*supra*)

9 The standard conditions referred to in the facility letters and accepted by the defendants contained amongst other things the following:

Condition 5(a):

If the market value of any security (including immovable property) falls below what the Bank considers to be an adequate security margin, the Bank shall be entitled, without prejudice to any other rights that the Bank may have, to reduce the credit limits and/or withhold further disbursement; and/or to require repayment of such amount as the Bank may specify including prepayment of any loan and/or to require additional security to be furnished.

Condition 8(a):

All cost and expenses whatsoever including legal costs on a solicitor and client basis, connected with the provision protection and realisation of securities, and the processing implementation and recovery of moneys owing under the facilities as well as the contesting of and involvement in any legal proceedings of whatsoever nature by the Bank for the protection of or in connection with any account(s) or assets of the Borrower shall be payable by the Borrower on demand, on a full indemnity basis. …

***Mortgages over the Properties***

10 The Facilities were secured, amongst other things, by mortgages over the said properties. By a mortgage dated 12 June 2002 and registered as I/90199Q (the "first mortgage"), the first defendants mortgaged the said properties to the plaintiffs as security as provided under the terms of the first mortgage.

11 By a second mortgage dated 12 June 2002 and registered as I/90200Q (the "second mortgage"), the first defendants (as mortgagors) and the second defendants (as borrowers) mortgaged the said properties to the plaintiffs as security as provided under the terms of the second

mortgage.

12 Under clauses 3 of the first mortgage and the second mortgage (collectively referred to as the "mortgages"), the first and the second defendants agreed to perform, observe and be bound by the covenants and conditions set forth in the Memorandum of Mortgage filed in the Singapore Land Registry and numbered as MM I/80616E.

13 Under the terms of the mortgages, the first and the second defendants covenanted with the plaintiffs, amongst other things, as follows:

> (a) To pay to the Mortgagee on demand or when due, all monies, obligations and liabilities, whether present or future, actual or contingent, primary or collateral which are now or may at any time hereafter be or become from time to time due, payable or owing to the Mortgagee by the Mortgagor and/or the Borrower, or incurred or assumed by the Mortgagee on behalf of or on account of the Mortgagor and/or the Borrower, anywhere whether in or outside Singapore, or in respect of which the Mortgagor and/or the Borrower may be or become liable to the Mortgagee on the said Account anywhere … (para 1 of the mortgage);
>
> (b) Any demand for payment or any other notice under this security may be made or given by any manager deputy manager accountant sub-accountant or secretary or other officer for the time being of the Mortgagee or any person or firm for the time being acting as Solicitor or Solicitors for the Mortgagee by letter sent by registered post addressed to the Mortgagor and the Borrower or either of them at their last recorded address or at their last known place of business or abode and the provisions of section 55(3) of the Land Titles Act (Cap 157) shall apply to every such demand or notice (paragraph 4(1) of MM I/80616E);
>
> (c) The power of sale and other powers conferred on Mortgagees by the Act shall apply to this security but without the restrictions therein contained as to giving notices or otherwise so that for the purpose of a sale of the Mortgaged property or any part thereof under such statutory power the whole of the moneys hereby secured shall notwithstanding anything herein contained be deemed to be due immediately on the execution of these presents and the said power of sale shall be exercisable after seven (7) days' previous notice requiring payment in lieu of the three (3) months' notice required by the Act and such notice requiring payment shall be in writing and the provisions of section 55(3) of the Land Titles Act (Cap 157) shall apply thereto (paragraph 4(9)(a) of MM I/80616E); and
>
> (d) A certificate signed by an officer of the Mortgagee or by the Mortgagee's solicitors as to the money or liability for the time being due or owing or incurred to the Mortgagee from the Mortgagor or the Borrower or from any other person liable to the Mortgagee under the Mortgage may be adduced by the Mortgagee and shall in that case be accepted by the Mortgagor and the Borrower as conclusive evidence that the balance or amount thereby appearing is due or owing to the Mortgagee from the Mortgagor or the Borrower or the person liable as aforesaid (para 4(26) of MMI/80616E).

***The claim against the guarantors***

14 By a letter of guarantee dated 7 April 2000, the third and the fourth defendants (the "guarantors") also jointly and severally guaranteed, to pay on demand, all monies which were at any time due, payable or owing to the plaintiffs by the first defendants with interest calculated at the bank's rate/s for the time being applicable in accordance with the plaintiffs' prevailing practice, together with all fees, commissions and other bankers' charges including legal costs and expenses on

a full indemnity basis which the Plaintiffs may incur, until full payment is received by the plaintiffs, in relation to the first Facility.

15 By another letter of guarantee also dated 7 April 2000, the guarantors similarly jointly and severally guaranteed, to pay on demand, all monies which are at any time due, payable or owing to the plaintiffs by the second defendants with interest calculated at the bank's rate/s for the time being applicable in accordance with the plaintiffs' prevailing practice, together with all fees, commissions and other bankers' charges including legal costs and expenses on a full indemnity basis which the plaintiffs may incur, until full payment is received by the plaintiffs, in relation to the second Facility.

16 The letters of guarantee (collectively referred to as the 'guarantees') expressly provide, *inter alia*, namely that:-

> (i) A certificate signed by any officer or solicitor of the plaintiffs as to any amount due at any time from the first or second defendants and/or the third and fourth defendants to the plaintiffs in respect of the guarantees (including the calculation of any amount of any interest payable) shall, in any legal proceedings against the third and the fourth defendants, be conclusive evidence of the indebtedness at such date of the first or second defendants and/or the third and fourth defendants to the plaintiffs and shall be binding on the guarantors…
>
> (ii) The third and fourth defendants irrevocably and unconditionally undertake to indemnify the Bank in full against all losses, damages, liabilities, claims, costs and expenses whatsoever which the Bank may sustain or incur as a result of or arising from the Bank's advances, credit or financial accommodation to the Customer as well as all legal costs as between solicitors and clients and all other costs and disbursements incurred for or in connection with demanding and enforcing payment of all monies guaranteed hereunder or otherwise howsoever in enforcing this Guarantee and/or any of the covenants, agreements, undertakings, stipulations, terms, conditions or provisions of this Guarantee.

17 The plaintiffs averred that the first defendant defaulted in their payment obligations. In this regard, it would appear that many an attempt by the plaintiffs' officers to contact the defendants was in vain. As a result, the plaintiffs by their letter dated 11 July 2002 demanded from the first defendants, within seven days from the date of the letter, payment of the outstanding sums due and payable by them under the first facility together with contractual interest thereon, banker's charges, and all other applicable dues. Insofar as is material, the relevant parts of the said letter addressed to the first defendants, to the attention of Ms Indah Nathania Tanito read as follows:

> 2. Please be informed that the Bank has decided to terminate the banking facilities granted to you with immediate effect.
>
> 3. We are instructed by our clients that as at 8 July 2002, the sum of USD2,504,403.90 (comprising both principal and interest) was due and payable to our clients.
>
> 4. We are further instructed to and do HEREBY DEMAND from you on behalf of our clients, payment of the said sum of USD2,504,403.90 together with all further contractual interest, banker's charges, and all applicable dues, all from 8 July 2002 to the date of full payment.
>
> 5. TAKE NOTICE that unless payment of the said sum of USD2,504,403.90 together with all further contractual interest, banker's charges, and all applicable dues, all from 8 July 2002 to the date of full payment, is made to our clients or to us as their solicitors within seven (7) days from

the date of this letter, our clients will have no other alternative but to take such steps as they may deem necessary to protect their interests, without further reference to you. We trust you will not render this course of action necessary.

6. Kindly also be informed that the Bank will proceed to exercise its right of set-off against the credit balances of all accounts maintained by you with the Bank to reduce the outstandings owed by you to the Bank.

18 There was no response whatsoever from the defendants. All the protests started arriving only after the plaintiffs had applied for and obtained an order for the delivery of possession of the said property pursuant to the earlier order of court dated 30 December 2002.

19 The allegations by the defendants in the appeal before me was that the plaintiffs had suddenly stopped all credit facilities to the second defendants without any prior notice whatsoever in May 2002. The response to the said allegation as contained in paras 8 to 16 of the affidavit of Jane Jan, a business manager of their business financial services unit reads as follows:

… The 3rd and 4th Defendants have now further alleged that the Plaintiffs had suddenly stopped all credit facilities to the 2nd Defendant without any prior notice whatsoever in May 2002.

… It was clearly stipulated in the Letter of Offer dated 3 April 2000 (at pages 42 to 46 of the first Affidavit of Chia Geok Ee, Evelyn filed on 25 October 2002) that the 2nd Defendant had to maintain a minimum networth of S$200,000.00 at all times during the currency of the facilities and that the aggregate Current Market Value of the above mortgaged properties must not be less than S$9,000,000.00 at all times during the currency of the facilities. Further, it was a condition that the advance to both the 1st and 2nd Defendants must not exceed at all times the combined sum of (i) USD deposits; (ii) 90% of the USD equivalent of the SGD deposits and (iii) 70% of the USD equivalent of the Current Market Value of the mortgaged properties at the Plaintiffs' prevailing exchange rate or USD224,000.00, whichever is lower, otherwise additional (top-up) security acceptable to the Plaintiffs are to be pledged to cover the shortfall or the limits reduced accordingly. These conditions were maintained when the credit limit of the 2nd Defendants' account was increased from USD1,450,000.00 to USD2,000,000.00 on 10 April 2001.

… However, as at 15 March 2002, both conditions had been breached. The net worth of the 2nd Defendant as at 31 December 2000 was only S$28,000.00. Further, the aggregate Current Market Value of the mortgaged properties had fallen to S$8.3 million, as valued by Colliers Jardine International Pte Ltd on 17 January 2002. Also, the Plaintiffs had required that the 2nd Defendant channel export proceeds to the plaintiffs. The 2nd Defendant was informed that it would have to open an offshore account with the Plaintiffs for this purpose. However, the 2nd Defendant failed to comply with this.

… The Plaintiffs became very concerned about their potential exposure given that the abovestated conditions had been breached. Additionally, the existing limit of USD2,000,000.00 was almost fully utilised with a total outstanding of USD1,939,522.00 entirely in trade receipts. The Plaintiffs then wanted the 2nd Defendant to decrease its outstanding back to USD1,450,000.00 by 31 May 2002. The Plaintiffs then continued to monitor the situation closely. …

… On 18 April 2002, the Plaintiffs noted that there was no improvement in the payment of the outstandings due by the 2nd Defendant. As the Plaintiffs had breached the various conditions

stated above, the Plaintiffs had no alternative but to take measures to protect its interests in view of the potential exposure of the Plaintiffs. Internally, the Plaintiffs decided that they would reduce the credit limit of the facilities granted to the 2nd Defendant to USD1,450,000.00 with the new conditions that the 2nd Defendant is to maintain a positive networth at all times whilst the accommodation of the facilities is in force and that the 3rd Defendant is not to dispose of two properties without the Plaintiffs' consent, namely, 60 Kim Seng Road, #16-07 Mirage Tower, Singapore 239426 and 9 Ardmore Park, #20-03, Singapore 259955. …

… I then proceeded to contact the 3rd and 4th Defendants to inform them of the management's decision. However, despite numerous attempts to contact the 3rd and 4th Defendants, it appeared that they were either uncontactable or I was informed that they were not in their Indonesian office. I also tried to contact them via the 2nd Defendant in Singapore. However, each time I was informed by one Ms Wong Sau Lin, a director of the 2nd Defendant, that she could not get in touch with them and that she was not in a position to make any decisions.

… On 3 May 2002, I managed to speak to the 4th Defendant and I informed her about the management's decision, as well as the reasons for the decision. This was noted in an email from myself to Cynthia Tang, another officer of the Plaintiffs, whereby I informed her that due to, amongst other things, the weak financials of the 2nd Defendant, the credit group personnel had decided to reduce the facilities to a fully secured basis i.e. to USD1,165,000.00 by November 2002. In the meantime, any fresh transactions had to be fully backed by cash. …

… The Plaintiffs then proceeded to send a revised Letter of Offer dated 7 May 2002 to the 2nd Defendant, informing it of the reduced credit limit of USD1,450,000.00 as well as the new conditions which the Plaintiffs required. …

… On 16 July 2002, an Early Alert Report, which is a report prepared internally by the Plaintiffs for accounts which need close monitoring in view of the declining condition of the state of the accounts, was prepared in respect of the 2nd Defendant. The report stated that both the 1st and 2nd Defendants had defaulted on payment in respect of the facilities granted to each of the two Defendants. It also stated that despite numerous attempts to contact the 3rd and 4th Defendants on their handphones and through their Singapore and Indonesian offices, they remained uncontactable. Further, it stated that the 2nd Defendant was to reduce the outstandings to within USD1,100,000.00 latest by 30 November 2002. …

20 An internal document of the plaintiffs with the heading 'Early Alert Report' dated 16 July 2002 but apparently signed on 23 July 2002 sets out the sequence of events in relation to the plaintiffs' concerns and findings contained the following:

1) Omnilite defaulted on payment of a LATR for USD65,530 & 4 IMLs totalling USD103,375 in Jun 02. In addition, the Jun 02 instalment for 2 HLs granted to related Elang Mas Enterprise PL ("Elang Mas") were also in arrears.

2) The 2 promoters/guarantors (Indonesians) were uncontactable despite numerous attempts by the BFM to reach them on their handphones, and through their S'pore and Indonesia offices. The guarantors' PB relationship manager was also unable to get in touch with them.

3) While trying to establish contact with the guarantors, liens were placed on all credit

balances maintained by Omnilite, Elang Mas and the guarantors with the Bank. Available funds in Omnilite's and Elang Mas' a/cs were applied respectively towards settlement of past due bills and o/s HL instalments.

4) By early July 02, we understand from the co.'s local staff that both salaries and rental have been owing.

5) On 11.07.02, legal demand letters were issued by Rajah & Tann to Omnilite, Elang Mas and the guarantors. Subject letters informed of the Bank's intention to terminate banking facilities granted to Omnilite and Elang Mas, and stipulated a 7-day grace period (expiring on 18.07.02), within which amounts o/s from Omnilite and Elang Mas must be settled. Else, the Bank is entitled to pursue further legal actions.

21 As it happened, nothing seemed to have moved the defendants to any action. The result was that the plaintiffs proceeded to send the requisite notice through their solicitors, pursuant to section 75 of the Land Titles Act (Cap.157) of the plaintiffs' intention to exercise their statutory power of entry into possession of the said properties, upon expiration of one month from the date of the said notice. What followed next was the plaintiffs' application to court herein.

22 It was not in dispute that the application which was filed on 25 October 2002 came up for hearing for the fourth time on 30 December 2002. Even as of that date, there was no affidavit from any of the defendants despite a direction by the court for the defendants to file their affidavits by 2 December 2002. In the result, the Senior Assistant Registrar made an order in terms of the application.

***Arguments***

23 On appeal, counsel for the defendants contended, amongst other things, that (a) the plaintiffs had wrongfully terminated the housing loan and the credit facilities; (b) in respect of the housing loan, which was for 300 months, the defendants were not in default of any payments and as such the plaintiffs had no right to terminate the said facilities; (c) even as regards the credit facilities granted to the defendants, they were not in default of any payments nor were they in breach of any conditions; and (d) the guarantees given by the third and fourth defendants were tainted by undue influence on the part of the plaintiffs.

24 Counsel for the defendants also mounted an attack on the Early Alert Report of the plaintiffs. He suggested that the said report was made up. He questioned how a report which was dated 16 July 2002 could bespeak of events after that date. He contended that the plaintiffs' averments as contained the first affidavit of Jane Jan that the plaintiffs had made more than reasonable attempts to inform the third and fourth defendants of the suspension of the credit facilities were baseless.

25 Counsel for the defendant also questioned the correctness of the net worth value of the second defendants as arrived at by the plaintiffs to be S$28,000. In brief, his submission was that the plaintiffs' conduct in recalling the loans were in breach of both the express and implied terms of their engagement and that there was an error in the figures submitted by the plaintiffs in regard to the amount of the principal sum disbursed. It was also contended on behalf of the defendants that the plaintiffs' action for delivery of possession of the mortgaged properties was not in compliance with the requirements of Order 83 of the Rules of Court in that the plaintiffs had failed to establish the circumstances under which the right of possession arises.

***Conclusion***

26 The main contention by the defendants in this originating summons was that the plaintiffs were unreasonable and precipitate in terminating the credit facilities given to the defendants and that there was no justification whatsoever for the recall of the said facilities. An immediate question was: if it was in fact the situation and the defendants were indeed aggrieved by the alleged sudden and unreasonable conduct on the part of the plaintiffs, why did the defendants have to wait until the appeal was in train to come up with their current allegations? Why didn't they raise their grievances and protests before the plaintiffs had applied to the court for delivery of possession of the subject properties? In this, the defendants had not, in my view, come up with any acceptable explanation.

27 The chronology of events set out in the written submission of the plaintiffs' counsel evinced to the court that apart from some procedural objections to the forms of pleadings and mode of the commencement of this action, no protests seemed to have been placed on record in relation to the termination of the loan facilities, until 28 January 2003. In this regard, it would be relevant to note that the facilities were recalled in early July 2002; the originating summons was filed on 25 October 2002; and the notice of appointment to hear the said summons was given on 12 November 2002. Worse still, even after the Senior Assistant Registrar gave directions to the defendants' solicitors to file the defendants' affidavits, if any, by 2 December 2002, there was nothing forthcoming from the defendants. Even on 30 December 2002, when the Senior Assistant Registrar made the order herein, there was no affidavit by the defendants concerning the alleged unreasonable conduct on the part of the plaintiffs.

28 In my opinion, the inaction by the defendants evidently supported the plaintiffs' contention that the present allegations by the defendants that they were the wronged party were artful and contrived belatedly to give a semblance of respectability to the defendants' present contentions, as had been attempted by the third and fourth defendants in their affidavits.

29 Leaving aside the issue relating to the absence of promptitude on the part of the defendants, the terms of facilities granted to the first and second defendants seemed to stipulate that the facilities were at all times subject to review from time to time and that they could be revised, reduced or cancelled by the plaintiffs at their sole discretion without notice. Proceeding further, it was also stated in the facility letters that the said facilities were to be made available at the sole discretion of the plaintiffs and had to be repaid on demand by the plaintiffs. Above all, there was also a specific and unambiguous provision that the grant of the said banking facilities was uncommitted. Given the phraseology of the facility letters, there was very little basis for the defendants to say that the plaintiffs were not entitled to terminate the facilities when they perceived that their securities were threatened.

30 Reliance was placed by the defendants' counsel to the Malaysian case of ***Bank Bumiputra Malaysia Bhd Kuala Trengganu v Mae Perkayayuan Sdn Bhd & Anor*** [1993] 2 CLJ 495. In that case, the court in Malaysia had decided that the plaintiff bank was not entitled to recall the term loan until the end of the term of the said facility. But in relation to the case before me, the advent of the terms that the facilities were 'uncommitted' and could be revised, reduced or cancelled by the plaintiffs at their 'sole discretion without notice', clearly supported the plaintiffs' contention that the principles stated in the Bank Bumiputra case did not fit the situation at hand. In my opinion, the unambiguous terms of the facility letters, solemnly agreed and subscribed to by the parties, could not be watered down unilaterally by one party. At any rate, the factual scenario narrated by the plaintiffs' business manager, Jane Jan, clearly justified their action. In my evaluation, the plaintiffs did not terminate the facilities, willy-nilly, but only after their numerous attempts to communicate with the defendants had failed. The difficulties the defendants were complaining of now were brought about not by any fault on the part of the plaintiffs but by the defendants making themselves unavailable for reasons only known to them.

31 As regards the Early Alert Report, there was a trenchant criticism by the defendants that this document was an afterthought. The criticism was that the said Report contained references to future events; it was made after 11 July 2002 after the letters of demand were issued; and that it seemed to state that the plaintiffs had only intended to terminate the facilities rather than they had already done so. Having viewed the Report, what was clear was that although the said Report was dated 16 July 2002, it was only signed off on 23 July 2002. As such, the Report not surprisingly recorded events which occurred both before and after the letters of demand. In the circumstances, the criticisms by the defendants were found by me to be of little value.

32 The defendants also contended that the statement of outstandings by the plaintiffs was erroneous and that the plaintiffs had failed to prove that the stipulated sums were due and payable. In my view, the arguments advanced on behalf of the defendants were once again found to be unmeritorious. It is a settled principle of law that a certificate issued by a bank under the conclusive evidence clause was, in the absence of fraud or manifest error on the face of the certificate, determinative of the amount due to the bank: (see ***Dobbs v National Bank of Australasia Ltd*** (1935) 53 CLR 643: ***Bangkok Bank Ltd Cheng Lip Kwong*** [1989] SLR 1154; and ***Oversea-Chinese Banking Corporation Ltd v The Timekeeper Singapore Pte Ltd & Ors*** [1997] 2 SLR 526 at 542-I and 543-A).

33 The court was informed by the plaintiffs' counsel that there was a small discrepancy in the figures stated in the affidavit of one of their officers, Chia Geok Ee Evelyn, filed on 25 October 2002. The amount stated as disbursed or advanced in respect of Term Loan 1 was US$ 1,394,600.00 and in respect of Term Loan 2 was US$ 1,379,400. But the amounts should be US$ 1,340,891.64 and US$1,329,913.07 for Term Loans 1 and 2 respectively. However, the said errors did not in any way change the quantum of the amounts owed by the defendants since the final amount outstanding as claimed by the plaintiffs as at 25 October 2002 remained accurate i.e., US$ 1,241,542.79 and US$1,234,686.76 in respect of Term Loans 1 and 2 respectively. Given the facts, it was clear that there appeared to be no prejudice occasioned to the defendants.

34 As to the allegation of undue influence raised by the defendants, I must say at the outset that apart from its very late arrival, the scenario painted by the defendants also did not seem to lend much weight to their credibility. It is a well-entrenched principle of law that a mere allegation is not sufficient to found a defence of undue influence. It was held in ***Malaysian French Bank Bhd v Abdullah bin Mohd Yusof & Ors*** [1991] 2 MLJ 475 that in order to succeed in the defence of undue influence, the defendants had to establish that the plaintiff was in a position to dominate the defendants' will and thus obtained an unfair advantage by using that position. It was also held by the House of Lords in ***National Westminster Bank Plc v Morgan*** [1985] 1 AC 686:

> … that the principle that justified the setting aside of a transaction on the ground of undue influence was the victimisation of one party by the other, and before a transaction could be set aside for undue influence, whether in reliance on evidence or on the presumption of the exercise of undue influence, it had to be shown that the transaction had been wrongful in that it had constituted a manifest and unfair disadvantage to the person seeking to avoid it;

35 The documents placed before the court were clearly indicative of the feature that the third and fourth defendants had direct as well as indirect benefits from the facilities granted to the first and second defendants. Apart from it, the averments of the third defendant in her affidavit filed on 17 March 2003 and the meek echo of it in the fourth defendants' affidavit of even date, did not go anywhere near establishing the principles stated in ***Malaysian French Bank*** as well as ***National Westminster Bank Plc*** cases.

36 The other contention by the defendants that there was non-compliance with Order 83 of the Rules of Court was also plainly unsustainable. The plaintiffs had, in my opinion, provided the defendants with all the requisite particulars and in any event, the conclusive evidence clause in the facility documents precluded the defendants from arguing that they were not liable to the plaintiffs for the amounts stated and that the statements of outstandings were wrong.

37 There was also a contention by the defendants that the net worth valuation done by the plaintiffs of the defendants was inaccurate and wrong. Having regard to the fact that the plaintiffs had arrived at their valuation from the financial statements provided by the defendants, here again I found the arguments of the defendants to be devoid of merit.

38 I was mindful that in the case before me, there were allegations and rebuttals by the parties by way of affidavits. The court's approach to conflicting evidence was laid down by Lord Diplock in the Privy Council case in ***Eng Mee Yong & Ors v Letchumanan*** [1979] 2 MLJ 212 at 217 as follows:

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. In making such order on the application as he "may think just" the judge is vested with a discretion which he must exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have sufficient *prima facie* plausibility to merit further investigation as to their truth. …

39 Although the defendants had mounted a concerted effort to raise a variety of arguments with a view to clouding the real issue on appeal, having gone through all the arguments and having regard to the express terms of the facility letters as well as the defendants' recalcitrancy including the extraordinary delay on the part of the defendants to come up with their purported defences which culminated in the order of court made on 30 December 2002 by the Senior Assistant Registrar, the conclusion that the defences now presented were all ill-merited, was inevitable. In my view, the action taken by the plaintiffs to protect their security was not unreasonable nor could it be regarded as unconscionable.

40 In my opinion, the defendants had failed to establish any genuine defence to the plaintiffs' present claim nor did the defendants appear to have any valid counter-claim against the plaintiffs. In the premises, the appeal by the defendants against the decision of the Senior Assistant Registrar was dismissed with costs on an indemnity basis.

*Order accordingly.*