

Manjit Kaur Monica v Standard Chartered Bank
[2000] SGHC 205

Case Number : OS 60/2000, Ra 600234/2000
Decision Date : 06 October 2000
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Alagappan Arunsalam (A Alagappan & Co) for the applicant; Meat Kaur (William Lai & Alan Wong) for the respondents
Parties : Manjit Kaur Monica — Standard Chartered Bank

JUDGMENT:

Grounds of Decision

1. This is an application filed on 2 June 2000 by Manjit Kaur Monica ('the Applicant') seeking to set aside a Statutory Demand dated 17 February 2000 issued by the solicitors of the Respondents, Standard Chartered Bank ('the Bank') and to dismiss the Bank's Creditor's Petition No 1020/2000 dated 19 April 2000 filed against her.
2. On 19 June 2000, an Assistant Registrar ordered that the Statutory Demand be set aside with costs against the Bank.
3. The Bank appealed against that decision. On 18 August 2000, I allowed the appeal with costs (on an indemnity basis). The Applicant is appealing against my decision.

Background

4. In 1994, the Applicant and her husband bought a property known as No 197 Yio Chu Kang Road, Singapore 545644 ('the Property') for \$1,080,000. They took a loan of \$875,000 from the Bank which was secured by a mortgage on the Property.
5. The Applicant refers to her occupation as that of an estate agent. She said that during the recent recession her sales nosedived and she and her husband were not able to continue servicing the loan.
6. The Bank exercised its rights as mortgagee and commenced an action in Originating Summons No 18 of 1998 against the Applicant. On 27 April 1998, the Bank obtained an order for possession. A Writ of Possession was executed on the Property on 31 July 1998.
7. At that time, the front and rear walls of the terrace house on the Property had been torn down and there were abandoned articles dumped on the Property.
8. The Applicant requested until October 1998 to renovate the premises and find a buyer.
9. On 30 September 1998, a nuisance order was apparently issued against the Property.
10. On 29 October 1998, Knight Frank valued the fair market value of the Property at \$450,000 to \$480,000, after an inspection of the Property.
11. Apparently the Applicant and her husband did not give up possession by end October 1998 as the Sheriff of the Supreme Court had to issue a notice dated 8 December 1998 threatening eviction.

12. In any event, the Bank managed to put up the Property for auction on 16 December 1998. The auction was handled by Jones Lang Wootton (i.e. instead of Knight Frank). The opening price sought was \$700,000 but no bids were received.
13. Between 27 December 1998 and 20 January 1999 offers from \$585,000 to \$610,000 were received through an estate agent Gates P. Properties and through Jones Lang Wootton.
14. Significantly, the Applicant herself had written to the Bank by a letter dated 5 January 1999 informing the Bank that she had a buyer for the Property at \$550,000. The letter states:

'RE: Buyer for No. 197, Yio Chu Kang Road

Dear Sir/Madam,

This is to (*sic*) request that we have a buyer for the above property at \$550,000. For the short fall of approximately \$427,000 we are willing to sign a term loan of 10 years. We are able to afford the instalments of \$5000 per month.

I can pay \$5000 on the 28th January 99. I will also be able to get one or two (*sic*) guarantor to support the loan.

Looking forward to an early reply via fax No. 2241814.'

15. On 3 February 1999, one Noorimah Bte Mohd Akber from the Bank contacted the Applicant to inform her that the Bank had sold the Property for \$650,000.
16. With this sale, a shortfall resulted. After the sale was completed, the balance due to the Bank as at 5 May 1999 was \$343,970.64 ('the Shortfall').
17. The Bank's solicitors sent a letter of demand dated 14 May 1999 to the Applicant and her husband for this sum. Neither the Applicant nor her husband queried the Shortfall.
18. On the contrary, the Applicant was negotiating with the Bank to pay the Shortfall and did this on a number of occasions i.e. on 26 July 1999 (when she attended at the Bank's office), on 27 August 1999, on 24 September 1999 and on 30 September 1999.
19. This was followed by a letter dated 26 October 1999 from the Bank's solicitors to the Applicant and her husband stating that the Bank was prepared to allow them to pay the Shortfall (on which interest would be running) in instalments.
20. It is not clear from the affidavits whether there was a written response to this letter from the Applicant and her husband.
21. In any event, the Bank apparently followed up by sending a letter to the Applicant and her husband dated 13 November 1999.
22. To this the Applicant replied on 24 November 1999 stating that her husband was requesting a grace period of fourteen days to respond. Her letter states:

'CLAIM BY STANDARD CHARTERED BANK

Housing Loan No. 00382833 Current No. 02-028-65738

We (*sic*) receive your letter on the 13th November 1999.

My husband Jeswindar Singh is requesting a grace period of 14 days (*sic*) in respond to your letter of 10th November 1999.

Sorry for any (*sic*) inconveniences caused.

Yours faithfully
Sg. Manjit Kaur

P/S Please forward all correspondence to our office address as above.
Thank You.'

23. Apparently, sometime before 8 February 2000, the Bank's solicitors wrote to the Applicant and her husband about their collecting Statutory Demands issued or to be issued against each of them.

24. On 8 February 2000, the Applicant replied to the Bank's solicitors to make an appointment to collect the Statutory Demands but sought to fix the appointment about one month later i.e. for 6 March 2000. Her letter states:

'Dear Cheryl Lee,

RE: Your Ref: WL/SCBG/045/06/97 (CH/SS)

I (*sic*) have rung your office last week, and they say you were on leave. However this is to request if I and my husband Jeswindar Singh could come and see you personally to receive the Statutory Demand. (*sic*) As my Bankruptcy Proceedings will be withdrawn in about 2 to 3 weeks and I am waiting for the Court Order. So could I come and see you together with my husband after it is withdrawn. It would be easier if you could serve it on us together as it is the same case. Please let me know if this is alright. You could reply this letter to fax number 2950049. I could fix an appointment with you for 6th March 2000 at 2 p.m. as by then the Bankruptcy Proceedings will be withdrawn by then.

Thank you for your co-operation. Sorry for any inconvenience caused.'

The bankruptcy proceedings referred to in the letter were probably proceedings by another creditor.

25. Subsequently the Bank's solicitors issued a Statutory Demand dated 17 February 2000 against the Applicant (presumably another Statutory Demand was issued against her husband at around the same time).

26. The solicitors then wrote on 18 February 2000 to the Applicant and her husband to reject their request to collect the Statutory Demands on 6 March 2000 in view of earlier unfulfilled promises and threatened to advertise the same if they were not collected within three days.

27. Eventually the Applicant (and presumably her husband too) collected the Statutory Demand(s). The date of collection was not specified in the affidavits before me but it must have been sometime between 18 February 2000 and the end of March 2000 as the Creditor's Petition against the Applicant is dated 19 April 2000.

28. The Creditor's Petition was served by substituted service by way of posting on the door of the Applicant's last known place of residence at Block 5 Normanton Park #03-107 Singapore 119002 on 25 May 2000.

29. On 30 May 2000, the Bank's solicitors sent a cover letter and a copy of the Creditor's Petition to the Applicant at Blk 39 Upper Boon Keng Road #15-2408, Singapore 380039. The cover letter informed her that the hearing of the petition was on 2 June 2000.

30. On 31 May 2000, M/s A. Alagappan & Co, acting for the Applicant, wrote to the Bank's solicitors to say that the petition had not been served on the Applicant and sought information about the exact address and date when the petition was served.

31. This was followed by another fax/letter also dated 31 May 2000 from them stating that the Applicant's current address was the address at Upper Boon Keng Road and not the address at Normanton Park. In this fax/letter they raised the point that the Bank had sold the Property at 'well below the Open Market Price'.

32. On 2 June 2000, this Originating Summons was filed.

33. As a number of affidavits have been filed, I will first summarise the main contentions of the parties.

Applicant's main contentions

34. Although the Applicant had raised an issue about invalid service of the petition in her affidavits, her Counsel confirmed that this was not an issue before me.

35. According to the Applicant and to one Koh Puay Boon, who had executed two affidavits for the Applicant, Koh had tried to market the Property in 1998. It was alleged that there was a purchaser who was prepared to offer \$1.2 million through Koh but the Applicant and her husband were willing to sell for only \$1.25 million. That deal fell through.

36. Then, in January 1999, another agent, one Ms Jazz Ti Ai Lian contacted Koh. After Ms Jazz's purchasers, Ms Jazz and Koh had viewed the property, the purchaser allegedly offered \$800,000 but the Applicant and her husband were then asking for at least \$880,000. Ms Jazz allegedly said that her purchaser was still interested but nothing else appears to have developed.

37. According to the Applicant and Koh, Koh was then, in January or February 1999, negotiating with one David Chan who was prepared to buy the Property at \$900,000. However the Applicant wanted \$950,000 although she was prepared to accept \$920,000.

38. The Applicant said that in February 1999, Noorimah from the Bank had called her to inform her that the Bank was going to sell the Property for \$650,000. The Applicant alleged that she told Noorimah that she had a purchaser (David Chan) who was willing to pay \$900,000 and she was trying to get \$920,000. The Applicant also alleged that Noorimah had said she would wait one week for her to finalise the sale whereupon the Applicant immediately contacted Koh and asked him to expedite the deal with David Chan. However two days later, Noorimah contacted her and informed her that the Bank had sold the Property for \$650,000. The Applicant said she was devastated and broke down and cried. Another two days later, Koh called the Applicant to inform her that David Chan had agreed to buy the Property at \$920,000. According to the Applicant and Koh, it was then that the Applicant told Koh that the Bank had sold the Property for \$650,000. Koh was shocked. The Applicant was crying.

39. I will refer to the two figures of \$900,000 and \$920,000 as 'Chan's offers' for convenience although, even on the Applicant's own stand, the \$920,000 was not yet offered at the time of the conversation with Noorimah.

40. The Applicant also exhibited various valuation reports of the Property:

(a) A valuation report by Henry Butcher Appraisal Group Pte Ltd ('Henry Butcher') dated 26 August 1994. This valued the Open Market Value of the Property as of that date to be \$1.2 million and the Forced Sale Value to be \$1.02 million.

(b) A revised valuation from Henry Butcher via a letter dated 10 December 1999 valued the Open Market Value of the Property as at 1 February 1999 to be \$934,000.

(c) The second valuation was repeated in another letter dated 11 August 2000 from Henry Butcher reiterating the Open Market Value of the Property as at 1 February 1999 to be \$934,000 but this time including a Forced Sale Value of \$793,000 as at 1 February 1999.

(d) Another letter also dated 11 August 2000 from Henry Butcher valuing the Open Market Value of the Property as at 1 September 1999 at \$1.068 million and the Forced Sale Value as at the same date as \$907,800.

(e) A valuation report by Newman & Goh dated 10 January 2000 valuing the Open Market Value of the Property as at February 1999 to be \$930,000 and as at September 1999 to be \$1.1 million.

41. The Applicant also exhibited what she referred to as Actual Transacted Prices of similar properties i.e. freehold 2-storey terrace houses in District 19 in February 1999. I should mention that the Property is actually a 999 leasehold property.

42. The Applicant did not dispute that she had sent the letter dated 5 January 1999 to the Bank stating that she had a buyer for the Property at \$550,000. Her explanation was that Noorimah had telephoned her in January 1999 and informed her that the Property was worth less than \$500,000. The Applicant felt indignant and, as a result, she said she would rather ask her sister to buy the Property for \$550,000. It was in this context that she wrote her letter.

43. The Applicant admitted that after she was informed of the sale by the Bank and the sale price, she had negotiated with the Bank to allow her to pay the Shortfall in instalments. She said she did this because she had no choice and alleged that while negotiating, she did repeatedly complain to the Bank's officers that the Bank had sold the Property at an undervalue but they had replied that nothing could be done as the Property had been sold.

44. As for the Bank's computer records of telephone discussions between the Applicant and various officers of the Bank between February 1999 to November 1999 which showed that there was no allegation by her then that the Bank had sold the Property at too low a price, she did not accept the authenticity and accuracy of such records.

45. Also, her Counsel raised the question of admissibility of such records in view of s 35(1)(c) of the Evidence Act, which he argued had not been complied with.

46. I set out below s 35(1)(a) to (c):

'Evidence of computer output

35(1) Unless otherwise provided in any other written law, where computer output is tendered in evidence for any purpose whatsoever, such output shall be admissible if it is relevant or otherwise admissible, according to the other provisions of this Act or any other written law, and it is -

(a) expressly agreed between the parties to the proceedings at any time that neither its authenticity nor the accuracy of its contents are disputed;

(b) produced in an approved process; or

(c) shown by the party tendering such output that -

(i) there is no reasonable ground for believing that the output is inaccurate because of improper use of the computer and that no reason exists to doubt or suspect the truth or reliability of the output; and

(ii) there is reasonable ground to believe that at all material times the computer was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the accuracy of the output was not affected by such circumstances.'

47. There are other provisions in s 35 which deal with 'an approved process' but it is not necessary for me to set them out.

48. Although the Applicant was represented earlier by a firm of solicitors ('the first firm of solicitors') in the Bank's earlier application for judgment and possession, the Applicant sought to play down this fact by initially suggesting, in paragraph 9 of her second affidavit signed on 17 June 2000, that they represented her in that application only and she was not aware of her legal rights about challenging the undervalue.

49. In paragraphs 42 and 43 of her third affidavit filed on 15 August 2000, she said that her husband had a lawyer-friend in the first firm of solicitors who had helped them in the earlier application without collecting any fee. However he also informed them that his firm could not afford to do prolonged litigation for free. It was because she could not afford litigation that she negotiated with the Bank about instalment payments to pay the Shortfall.

50. The Applicant submitted that she had established that the Bank had failed in its duty to act in good faith and to take reasonable care to obtain the best possible price.

51. Alternatively, the Applicant submitted that there were triable issues which were sufficient for the court to set aside the Statutory Demand against her.

52. On the alternative submission, the Applicant relied on Rule 98(2)(b) of the Bankruptcy Rules which states:

'98(2) The court shall set aside the statutory demand if -

(b) the debt is disputed on grounds which appear to the court to be substantial;'

53. The Applicant also referred to paragraph 66(3) of The Supreme Court Practice Directions which states:

'(3) When the debtor (a) claims to have a counterclaim, set-off or cross demand (whether or not he could have raised it in the action or proceedings in which the judgment or order was obtained) which equals or exceeds the amount of the debt or debts specified in the statutory demand or (b) disputes the debt (not being a debt subject to a judgment or order), the Court will normally set aside the statutory demand if, in its opinion, on the evidence there is a genuine triable issue.'

54. In *Stirling Estates (SA) Pty Ltd v Bradley* (2000) 34 ACSR 177, Hamilton J referred to s 459G(1) and 459H of the Corporations Law.

55. Under s 459G(1), a company could apply to the court for setting aside a statutory demand served on the company. Section 459H states:

'(1) This section applies where, on an application under section 459G, the Court is satisfied of either or both of the following:

(a) that there is a genuine dispute between the company and the respondent about the existence or amount of a debt to which the demand

relates;

(b) that the company has an offsetting claim.’

56. At p 183 to 184 of the report, the learned judge said:

‘The meaning of "genuine dispute" in the context of this section is most usefully expounded in the often quoted passage from the judgment of the former chief judge of this division in judge in *Eyota Pty Ltd v Hanave Pty Ltd* (1994) 12 ACSR 785 at 787-8, where McLelland CJ in Eq said:

*It is, however, necessary to consider the meaning of the expression "genuine dispute" where it occurs in s 450H [sic]. In my opinion that expression connotes a plausible contention requiring investigation, and raises much the same sort of consideration as the "serious question to be tried" criterion which arises on an application for an interlocutory injunction or for the extension or removal of a caveat. This does not mean that the court must accept uncritically as giving rise to a genuine dispute, every statement in 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" not having "sufficient prima facie plausibility to merit further investigation as to [its] truth" (cf *Eng Mee Yong v Letchumann* [1980] AC 331 at 341), or "a patently feeble legal argument or an assertion of facts unsupported by evidence": cf *South Australia v Wall* (1980) 24 SASR 189 at 194.*

*But it does mean that, except in such an extreme case, a court required to determine whether there is a genuine dispute should not embark upon an inquiry as to the credit of a witness or a deponent whose evidence is relied on as giving rise to the dispute. There is a clear difference between, on the one hand, determining whether there is a genuine dispute and, on the other hand, determining the merits of, or resolving, such a dispute. In *Mibor Investments* (at 366-7) Hayne J said, after referring to the state of the law prior to the enactment of Div 3 of Pt 5.4 of the Corporations Law, and to the terms of Div 3:*

"These matters, taken in combination, suggest that at least in most cases, it is not expected that the court will embark upon any extended inquiry in order to determine whether there is a genuine dispute between the parties and certainly will not attempt to weigh the merits of that dispute. All that the legislation requires is that the court conclude that there is a dispute and that it is a genuine dispute."

In Re Morris Catering (Aust) Pty Ltd (1993) 11 ACSR 601 at 605 Thomas J said:

"There is little doubt that Div 3 ... prescribes a formula that requires the court to assess the

position between the parties, and preserve demands where it can be seen that there is no genuine dispute and no sufficient genuine offsetting claim. That is not to say that the court will examine the merits or settle the dispute. The specified limits of the court's examination are the ascertainment of whether there is a 'genuine dispute' and whether there is a 'genuine claim'.

It is often possible to discern the spurious, and to identify mere bluster or assertion. But beyond a perception of genuineness (or the lack of it), the court has no function. It is not helpful to perceive that one party is more likely than the other to succeed, or that the eventual state of the account between the parties is more likely to be one result than another.

The essential task is relatively simple - to identify the genuine level of a claim (not the likely result of it) and to identify the genuine level of an offsetting claim (not the likely result of it)."

I respectfully agree with those statements.'

The Bank's contentions

57. The Bank did not agree that the Applicant had established that the Bank was in breach of any duty or that there was a genuine dispute or triable issue.

58. The Bank had a practice of keeping records of conversations with their customers. These were kept in a computer and would identify the officer whose conversation it was. The computer record was not a tape recording of the actual conversation, but functioned like an attendance note with the difference, highlighted by the Bank, that the information, once entered into the computer, could not be amended or deleted.

59. Noorimah, an Assistant Officer of the Bank, said that the Applicant did not speak to her on 5 January 2000 but to Sho Eng Hock, a Customer Assistant Manager of the Bank.

60. The computer record of this conversation identified the officer that the Applicant spoke to that day as Sho, and not Noorimah (although the Applicant said she never spoke to Sho). It also showed that the Applicant wanted the Bank to agree to a sale at \$550,000 to a buyer secured by her.

61. The computer record also showed that the Bank was not agreeable to this price as there would still be a balance due of around \$400,000. However, if the Applicant still wanted to proceed with the sale at \$550,000, she could forward her request in writing and indicate the re-payment plan for the balance. There was no mention in the record about the Applicant's sister or the indignation of the Applicant underlying the offer to buy at \$550,000.

62. As regards the Applicant's allegation that she had told Noorimah in early February 1999 about Chan's offers, Noorimah

denied being told this. Noorimah said that on 3 February 1999 she had told the Applicant that the Bank was selling the Property for \$650,000. There was no protest from the Applicant to the price.

63. The computer record of this conversation shows no evidence of any protest by the Applicant.

64. In response to the Applicant's allegation that she had complained not only to Noorimah, but subsequently to other officers as well, the computer records of the conversations with the officers that the Applicant had named were also produced (in so far as such conversations in fact took place). None of these records alluded to any complaint by the Applicant about an undervalue.

65. As for the admissibility of such records, the Bank's Counsel relied on s 32(b) of the Evidence Act. Section 32(b) states:

'32. Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:

(c) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind, or of a document used in commerce, written or signed by him or of the date of a letter or other document usually dated, written or signed by him;'

66. However, the Bank did not rely solely on the computer records.

67. The Bank relied also on:

- (a) Knight Frank's valuation of 29 October 1998 valuing the Property at between \$450,000 to \$480,000,
- (b) the fact that the auction on 16 December 1998 with an opening price of \$700,000 received no bids,
- (c) the offers through Gates B. Properties and Jones Lang Wootton between 27 December 1998 and 20 January 1999 were between \$585,000 to \$610,000,
- (d) the Applicant's own letter dated 5 January 1999, one month before the Bank's sale, in which she requested the Bank to allow her to sell the Property at \$550,000,
- (e) the fact that after the Applicant had been notified of the Bank's sale and the price, she was seeking the Bank's indulgence to pay the Shortfall by instalments,
- (f) the fact that the Applicant had been represented by solicitors in the earlier application by the Bank for judgment of the outstanding sum (before the sale) and possession,
- (g) the fact that the Applicant had all along, and even when she received the Statutory Demand (in February or March 2000) failed to lodge any protest with the Bank until the letter/fax from her new solicitors dated 31 May 2000 alleging for the very first time, sixteen months after the Bank's sale, that the Property was sold at an undervalue.

68. The Bank also stressed that the walls of the house at the Property had been torn down and there were abandoned items dumped at the Property.

69. As for the valuations obtained by the Applicant, the Bank argued that:

(a) the subsequent valuations of Henry Butcher i.e. after their first valuation dated 26 August 1994, were made without inspecting the Property again and were based on the Property's condition in 1994 i.e. before the walls were torn down and the dumping of abandoned items,

(b) the valuation report by Newman & Goh was irrelevant as it was based on an inspection of the external structure nine months after the Bank had sold the Property to the new owners who must have rebuilt the Property. In fact, that report mentioned that the Property was undergoing refurbishment.

70. In short, none of the valuation reports relied on by the Applicant were based on the actual condition of the house at the Property in February 1999.

71. The Bank also pointed out that it was strange that Koh's advertisements in 1998 were to sell the Property at \$1.1 million and yet he purportedly received an offer of \$1.2 million. Worse still, the Applicant allegedly refused even to accept the offer at \$1.2 million.

My views on the main contentions

72. Even if Koh had received an offer of \$1.2 million and then \$800,000 in 1998, this would be immaterial because neither of the alleged offers was accepted by the Applicant. However I find it telling that Koh purportedly received an offer of \$1.2 million and that the Applicant had rejected this offer when Koh's advertisements (if indeed they were put up by Koh) were seeking \$1.1 million only. No one would have offered \$1.2 million in response to such advertisements and it would be equally strange, to put it mildly, for the Applicant to reject such an offer, if made, which was more than what Koh's advertisements had sought.

73. I am also of the view that the allegation about Chan's offers is a false one.

74. On 5 January 1999, just one month earlier, the Applicant had written to persuade the Bank to let her sell the Property at \$550,000. I have set out its contents above.

75. The tone and substance of this letter belies the Applicant's allegation that it was sent because the Bank had said the Property was worth \$500,000 only. There was no reason for the Applicant to want to sell the Property to her sister at \$550,000, if the Applicant did not believe that this was a genuine price, as the Applicant would still be liable for the balance. Indeed, the letter shows that she was aware that she still had to deal with the balance and she even proposed to get some guarantors for the balance. The Applicant's allegation about her indignation was a fabrication to try and avoid the consequences of her own letter.

76. Secondly, after the Applicant was told on 3 February 1999 about the Bank's sale at the price of \$650,000, the Applicant went on to negotiate over a number of months to pay the Shortfall in instalments. As a result, the Bank even responded to allow her to pay in instalments via the Bank's solicitors' letter dated 26 October 1999, referred to above.

77. The Applicant's conduct contradicts her belated allegation about Chan's offers. I am also of the view that the principles of waiver, acquiescence and/or estoppel would preclude her from raising that allegation.

78. I do not believe for one moment the Applicant's excuse that she was unaware of her legal rights or that she had no money to engage a lawyer for expensive litigation at the time. The Applicant was not a simpleton and was an experienced estate agent. She did not have to engage a lawyer to know that if there was indeed an offer of \$920,000, she must protest formally and must

refuse to pay the difference between \$650,000 and \$920,000. She also did not have to engage a lawyer just to send a letter to record her protest.

79. Furthermore, since her husband had a lawyer-friend who was prepared to represent them in the earlier application for free, it would have been a simple matter for that same lawyer-friend to have advised them and send a letter for them without charging them or charging at minimal cost.

80. Thirdly, I also note that while the Applicant claimed not to know her legal rights and to have no money to engage lawyers, she was in the meantime gathering evidence in the form of valuation reports to use against the Bank. Hence the second valuation report from Henry Butcher is dated 10 December 1999 and the valuation report from Newman & Goh is dated 10 January 2000. Both these reports had stated the Open Market Value of the Property as at February 1999 to be \$934,000 and \$930,000 respectively.

81. Fourthly, I note that even with the valuation reports in hand, the Applicant still did not send any letter then to the Bank to protest about the selling price.

82. I am of the view that the Applicant did not do so even then because she was still trying to find someone to 'corroborate' her story about Chan's offers and/or she was waiting until the last possible moment to make the protest in writing so as to delay any step being taken by the Bank against her.

83. Fifthly, I am of the view that the Applicant had used the Henry Butcher and Newman & Goh valuations to come out with the figures of \$900,000 and \$920,000 which had hitherto still not been mentioned by her.

84. Sixthly, I refer to the Applicant's letter dated 24 November 1999, the contents of which have been set out above. There is no suggestion in that letter of any unhappiness with the Bank about the selling price and indeed her husband was asking for a grace period to revert to the Bank.

85. Seventhly, I refer to the Applicant's letter dated 8 February 2000, the contents of which have also been set out above. Again there is not the slightest suggestion therein of any unhappiness about the selling price, even though she knew that the Bank's solicitors were issuing Statutory Demands against her and her husband.

86. Lastly, the computer records of the telephone conversations also belie her belated allegation about informing Noorimah about Chan's offers and informing other bank officers about her unhappiness over the selling price.

87. As for the admissibility of the computer records, it is not necessary for me to decide whether s 32(b) of the Evidence Act should prevail over s 35(1)(c) of the Evidence Act or vice versa because:

(a) when two of such computer records were first adduced by the Bank, the Applicant did not challenge their admissibility, and

(b) on the contrary, the Applicant later challenged the Bank to produce the computer records of the other conversations that she supposedly had with other officers (see paragraph 37 of her third affidavit filed on 15 August 2000).

88. In the circumstances, it was not open to the Applicant to challenge their admissibility.

89. In any event, the computer records simply reinforce the already overwhelming case against the Applicant and I would have reached the same conclusion even if I should disregard such records.

90. Aside from the Applicant's allegation about Chan's offers, the Applicant also appears to be relying on the valuations of Henry Butcher and Newman & Goh to argue that the Bank's selling price was at an undervalue.

91. While valuation reports may, generally speaking, be useful, they are not always the best evidence available. Thus, in *Malayan Banking Bhd v Lim Poh Ho & anor* (1997) 1 MLJ 662, the Court of Appeal (in Kuala Lumpur) said (at p 670):

‘The true commercial value of a property is not what any valuer thinks it should be, but the actual price that property will fetch when it is put up for sale in the open market.’

92. In the particular circumstances of this case:

- (a) there was an auction of the Property on 16 December 1999 which did not attract a single bid at \$700,000,
- (b) the subsequent offers through Gates B. Properties and Jones Lang Wootton were below \$650,000,
- (c) the Applicant’s letter dated 5 January 2000 showed that she herself was trying to persuade the Bank to sell to a buyer she had secured at \$550,000.

93. In these circumstances, the Bank’s sale price of \$650,000 in early February 1999 was clearly the best price obtainable then.

94. Besides, the retrospective valuation reports of Henry Butcher and Newman & Goh were not reliable for the reasons submitted by the Bank which I do not need to repeat.

95. The Applicant argued that the torn walls were not material and the house was in as good a condition as when it was bought. She, and Koh, said that that was why they described the house as being in an ‘original’ condition in their advertisements. Koh even said that this ‘original’ condition was a selling point to those who wanted to renovate the house.

96. On the other hand, the Bank obtained an opinion from Jones Lang LaSalle dated 14 August 2000 stating that a property cannot be referred to as ‘original condition’ if there is any work done to it eg. demolition of a wall.

97. I am of the view that the torn walls were clearly an adverse feature of the house at the Property and the house was clearly not in its ‘original’ condition.

98. As the valuation reports of Henry Butcher and Newman & Goh were not based on inspections of the Property at the material time i.e. with the walls torn down, they had no probative value.

99. Likewise, the Applicant’s Actual Transacted Prices of sales of purportedly similar houses in District 19 at the material time had no probative value as there was no evidence that those similar houses also had walls torn down. In any event, they are also not the best evidence available in view of the factors mentioned in paragraph 92 above.

Other allegations of the Applicant

100. For completeness, I will also deal with other allegations of the Applicant.

101. The Applicant mentioned that if the Bank had sold the Property in April 1998, it would have fetched more than \$1 million and if the Bank had sold it in September 1999, it would have fetched \$1.068 million. I note that the Applicant had not even given possession of the Property to the Bank after a Writ of Possession was executed on 31 July 1998. She was still asking for time to sell the Property. The Bank was in no position to sell the Property in April 1998.

102. In any event, it is for the Bank to decide when to sell the Property (see, for example, *Teo Siew Har v Oversea-Chinese Banking Corporation Ltd* (1999) 3 SLR 129).

103. The Applicant also alleged that the Bank did not obtain a valuation report from Knight Frank showing the valuation of the Property as at 9 February 1999. I am of the view that the valuation dated 29 October 1998 was good enough in that the Bank does not have to keep on getting revised valuation reports before the sale especially in the light of the factors I have mentioned in paragraph 92 above. Also, in the light of such factors, the Bank is not required to get a valuation after the sale just to value the Property as at February 1999 to justify the selling price.

104. As I have said, such factors are better evidence than valuation reports.

105. The Applicant raised the argument that the Bank had attempted to sell the Property at only one auction whereas even the auctioneers had said there would be three auctions. I would point out that Knight Frank had in its letter of 29 October 1998 mentioned three of its forthcoming auction dates. It did not say that there should be three auctions. I would add that there is no obligation on a bank to attempt to sell at an auction, let alone, at more than one auction. It all depends on the particular circumstances and, here, there was no reason for the Bank to attempt to sell at another auction.

106. The Applicant argued that by seeking an opening bid of \$700,000 at the auction, the Bank did not believe the valuation of \$450,000 to \$480,000 by Knight Frank. I am of the view that this argument is neither here nor there. There is nothing wrong with the Bank trying to get more for the Property since it will be the one that bears the Shortfall if the Applicant and her husband cannot pay the Shortfall.

107. The Applicant also argued that the Knight Frank valuation could not be relied on since the Bank eventually managed to sell the Property for \$650,000. Again this argument is neither here nor there. It is not open to the Applicant to complain if the Bank got more than the valuation.

108. The Applicant also argued that she had not been kept informed of the subsequent offers received by the Bank. I note that the computer records of conversations show that she was informed of at least one of the offers. In any event, this argument is also neither here nor there. The Bank is not obliged in law to keep her informed of the offers it receives.

109. The Applicant also raised the point that the Bank did not show examples of the advertisements by it or on its behalf to sell the Property.

110. The Applicant relied on *Standard Chartered Bank Ltd v Walker* (1982) WLR 1410 in which it was alleged that a receiver had sold the charged stock too quickly without giving enough time for overseas buyers to attend the auction and enough notice generally and the auction was held at the wrong time of the year when it was too cold. In those circumstances, the court thought that there were triable issues of fact.

111. The Applicant also relied on *Lee Nyet Khiong v Lee Nyet Yun Janet* (1997) 2 SLR 713 in which the court held that the advertisement to sell the property was woefully inadequate as, for example, it did not mention that the house thereon had been extensively renovated. The advertisement appeared only once and the period of two weeks for tenders to be submitted was considered too short in the circumstances.

112. The Applicant further relied on *Cuckmere Brick v Mutual Finance* (1971) Ch 949 in which the court held that the mortgagee had failed in its duty in selling the mortgaged property without adequately publicising planning permission had been obtained to build flats.

113. The suggestion to me was that the advertisements on behalf of the Bank should have mentioned that the Applicant was seeking approval to enlarge the house.

114. In my view even if, for the sake of argument, the Applicant was seeking approval to enlarge the house, the Applicant had not yet obtained such approval. This distinguishes the case before me from *Cuckmere Brick*. Furthermore, approval to enlarge a house is quite different from approval to build flats.

115. In any event, the advertisements by the Applicant herself, and those purportedly by Koh as well, also did not mention that approval was being sought to enlarge the house.

116. Whatever the excuses, the fact is that the Property remained unsold by the Applicant (and Koh) until February 1999 notwithstanding that they 'aggressively marketed the Property' and had 'also informed a network of agents about the Property' and had purportedly showed these agents plans to enlarge the Property. It will be recalled that the Applicant herself could find a buyer at \$550,000 only, in January 1999. In addition, there was an auction on behalf of the Bank which was not successful and thereafter efforts were continued by other estate agents to find buyers for the Property

117. The facts before me are very different from the cases relied on by the Applicant.

118. In my view, the Applicant's complaint about there being no evidence of the Bank's advertisements of the Property was really an attempt by the Applicant to fish for evidence to use against the Bank.

119. The Applicant also complained that when Noorimah had told her about the Bank's sale, Noorimah had promised that she would arrange a 15-year interest-free loan. Again this is not a valid point. In the first place, Noorimah (who is an assistant officer) obviously had no authority on her own to grant such a loan. In any event, the point is irrelevant to the case before me. It is open to the Applicant to sue the Bank on this promise if it is valid and binding and this point was not pursued by her Counsel.

120. I should also mention one other point. The Applicant tried to make much about the Bank's initial omission to exhibit the computer records or to file an affidavit by Noorimah to deny the alleged conversation about Chan's offers.

121. In my view that omission was clearly due to the over-confidence or lack of experience of the Bank's solicitors and did not give rise to an inference that the Bank's or Noorimah's denial was untrue.

122. Besides, as I have said, even without the computer records, I would have reached a similar conclusion.

Summary

123. It is in the Bank's own interest to get as high a price as possible for the Property. There is no reason for Noorimah or the Bank to shut out an offer of \$900,000 or \$920,000.

124. The Applicant's own letter trying to persuade the Bank to allow her to sell at \$550,000, and her conduct over a few months, subsequent to the Bank's sale, in seeking an instalment scheme to pay the Shortfall, and her subsequent letters asking for a grace period to respond to the Bank and for time to collect the Statutory Demands demonstrate that her belated allegations are not genuine and are but a sham in order to play for some more time.

125. I also note that even at \$920,000, the difference is \$270,000. The Shortfall (as at 5 May 1999) was \$343,970.64. The Applicant had still not paid the Bank the 'balance' of about \$73,000 at the time of the Statutory Demand.

Judicial Commissioner

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