Lam Yee Shen and another *v* DBS Bank Ltd

[2021] SGHC(A) 20

Case Number	: Civil Appeal No 42 of 2021
Decision Date	: 26 November 2021
Tribunal/Court	: Appellate Division of the High Court
Coram	: Quentin Loh JAD; See Kee Oon J; Chua Lee Ming J
Counsel Name(s)	: Dhanwant Singh and C Selvaraj (S K Kumar Law Practice LLP) for the appellants; Koh Yeong Hung Sasha (Adsan Law LLC) for the respondent.
Parties	: Lam Yee Shen — Teo Sai Choo Regina — DBS Bank Ltd

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

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2021] SGHC 136.]

26 November 2021

Quentin Loh JAD (delivering the judgment of the court *ex tempore*):

1 This is a sad matter that has already been heard twice. The respondent bank sought to enforce its security under O 83 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("the Rules") over a property that had been mortgaged by the appellants to the bank because the appellants had defaulted on their payments under a loan facility. An Assistant Registrar ("the AR") heard the matter at first instance and granted the orders sought by the bank. The appellants appealed against the decision of the AR. The Judge below heard the parties and dismissed the appeal. The appellants now bring this appeal. We agree with the reasons given by the Judge. We find there are no merits in this appeal and we accordingly dismiss the appeal.

2 The bank has complied with the requirements of O 83 r 3. The appellants do not dispute having taken out a housing loan on 1 April 1999 and a term loan on 26 July 2012 from the bank. Both loans are secured by a mortgage over the property known as 20, Jalan Raja Udang, #08-03, Global Ville Singapore 329192 which is identified, for conveyancing and land title purposes as Lot No. MK-17-U68155W (Type SSCT Volume 937 Folio 176).

3 The appellants resist the attempts of the bank to enforce their mortgage by, with respect, allegations that are without any basis or validity. They are unfortunately grasping at straws to resist the consequences of their default provided for under the terms and conditions of the bank's mortgage. The evidence submitted by the bank is clear and unimpeachable:

(a) The letters of offer dated 1 April 1999 and 26 July 2012 showed that the loans under the facility were secured by a legal mortgage over the property. The appellants signed these, and other letters, varying the interest rate, in acceptance of the same.

(b) The Instrument of Mortgage dated 12 March 2004 and lodged in the Land Titles Registry ("2004 mortgage instrument") and the Subsidiary Strata Certificate of Title ("SSCT") showed that the mortgage was registered on 1 April 2004. These are documents entered upon a public register kept by the Registrar of Titles.

(c) The banks' account statements showed that the appellants had defaulted on their monthly

instalment payments between 1 December 2019 and 1 November 2020. On 3 November 2020, the appellants were in arrears in the sum of $26,049.72.

(d) Under the bank's standard terms and conditions, the appellants' default entitled the bank to cancel the facility and demand immediate repayment of outstanding sums.

(e) The memorandum of mortgage provided that the moneys secured would be due on demand, and that if the demand was not complied with within seven days after service, the bank would be entitled to exercise its statutory powers of a mortgagee.

(f) Two letters dated 27 August 2020 were sent to the appellants informing that the loans under the facility had been recalled and that the bank would exercise its statutory powers if payment was not made within seven days.

(g) Three letters dated 27 August 2020 were sent to the appellants giving, as required under s 75(2) of the Land Titles Act (Cap 157, 2004 Rev Ed), one months' notice of the bank's intention to exercise the power of entry into possession.

4 We now turn to the appellants' submissions to resist the bank's exercise of its rights under the mortgage.

Forgery

5 We first deal with the allegation that the appellants' signatures on the 2004 mortgage instrument were forged. This is a serious allegation. The burden of proof of forgery in law lies squarely on the appellants' shoulders. They did not produce any forensic evidence to prove that the impugned signature was forged and not their own. To support this allegation, the appellants relied on a police report that they filed in March 2021, eight days prior to the hearing before the Judge. We agree with the Judge that the report was a bare assertion, self-serving and plainly unsatisfactory.

6 This is also a most improbable allegation. The appellants do not, indeed they cannot, argue that they did not take out a loan to purchase the property. They do not say they had enough funds to purchase the property from their own resources or that they had taken out a loan with another bank or from another source. Further, this mortgage was signed, as noted above, in March 2004 and in the presence of a solicitor. They had been making the instalment payments for many years before they fell behind in their payments. The appellants cannot deny that they had an account with the bank and that they had been making their instalment payments from that account. They even drew down on their CPF accounts towards these mortgage instalment payments. For them to ignore all this evidence, including alleged discrepancies which we deal with below, and say their signatures were forged on the 2004 mortgage instrument is something that cannot be believed.

Inconsistencies and errors

7 The appellants refer to purported inconsistencies and errors in the mortgage instrument, the SSCT and the insurance policy. They also claim that the bank erred in making excess deductions under the facility. The Judge found that these allegations were without merit, and we agree with the Judge's findings here:

(a) The discrepancy between the 1999 mortgage document and the 2004 mortgage instrument regarding the bank's name was simply the result of the respondent changing its name from "The Development Bank of Singapore Ltd" to "DBS Bank Ltd".

(b) The formatting issues and discrepancies as to the mortgagors' address between the 1999 mortgage document and 2004 mortgage instrument were not material. The legal details of the property were left blank because the legal title of the property had not been issued at the time of the 1999 housing loan.

(c) The discrepancy in signatures in the appellants' and respondent's copy of the 2004 mortgage instrument was the result of the need to hold duplicate copies of that document. The differences appear minor and, as noted above, the burden of proof fell on them to prove, usually by expert forensic evidence, that the signatures were not their signatures. They have failed to prove this allegation.

(d) The SSCT document was correct. This was supported by a Lot History Search, a letter from the Building & Construction Authority dated 22 November 2000, and an email from the Singapore Land Authority dated 5 February 2021. This submission, with respect, shows a complete misunderstanding of how a plot of land is eventually subdivided into strata title for the individual apartments in a development. That same basic ignorance of how the share value of a unit in a development is derived and indeed fixed by the Building & Construction Authority is also exhibited in the submission of the appellants. In any case, this cannot prevent the enforcement of the bank's rights under the mortgage.

(e) The insurance policy was alleged to have been varied without permission, but this was not raised before the Judge below. In any case it is irrelevant and cannot be a basis to bar the bank's right to enforce the terms of their mortgage.

(f) The bank accepted that it did receive CPF Board remittances in excess of the monthly instalment payments, but the onus was on the appellants to instruct CPF Board not to do so. In any event, the payments were taken into account for the purposes of reducing the outstanding amount payable.

Undue influence

8 Finally, the appellants again rely on *dictum* in *Malayan Banking Berhad v Sivakolunthu Thirunavukarasu and others* [2008] 1 SLR(R) 149 at [35] for the proposition that, where the same lawyers act for purchaser and vendor in a conveyance, the presumption of undue influence could arise. However, that case is distinguishable; the representation of both mortgagor and mortgagee by a common solicitor in the present case (particularly where standard mortgages and standard mortgage terms and conditions for private residences are concerned) is very different from a situation where the purchaser and vendor are represented by the same solicitor (in which case the parties may have opposing interests). In any event, the appellants do not state how they were unduly influenced. Notwithstanding this alleged undue influence, the appellants continued to make monthly mortgage payments and the passage of time undermines their assertion here.

Conclusion

9 For the above reasons, this appeal is dismissed.

10 Costs must follow the event. The bank is entitled to indemnity costs. We fix costs at $30,000 all in to be paid by the appellants jointly and severally to the respondent bank. There will be the usual consequential orders.