Ho Soo Fong and Another v Standard Chartered Bank
[2006] SGHC 90

Case Number : OS 259/2004, RA 355/2005

Decision Date : 30 May 2006

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Chong Chi Chuin Christopher and Loy Sye Ling (Kenneth Tan Partnership) for the appellants; Loo Ngan Chor and Gan Theng Chong (Lee & Lee) for the respondent

Parties : Ho Soo Fong; Lin Siew Khim — Standard Chartered Bank

Land – Caveats – Withdrawal – Respondent bank having first legal mortgage over appellants' first property and lodging caveat over it – Respondent wrongfully refusing to withdraw caveat on mortgaged property – Whether respondent liable for difference between rate of interest being paid and rate of interest that might have been paid by appellants had respondent withdrawn caveat on first property – Whether foreclosure on second property by another bank caused by respondent's refusal to withdraw caveat lodged on first property – Principles for awarding damages for wrongful refusal to withdraw caveat against registered land – Section 129(1) Land Titles Act (Cap 157, 2004 Rev Ed)

30 May 2006

Andrew Ang J:

1 There were three appeals before me. The appellants in Registrar's Appeals Nos 356 and 357 of 2005, Ho Soo Fong ("HSF") and Ho Soo Kheng, are brothers and the joint owners of two properties known as 77 Syed Alwi Road, Singapore 207656 and 150 Braddell Road, Singapore 359933. The appellants in Registrar's Appeal No 355 of 2005 are HSF and his wife, Lin Siew Khim ("LSK") who jointly own 26F Poh Huat Road, Singapore 545074.

2 By three separate loan facility letters in similar terms, the respondent, Standard Chartered Bank, offered to make available to the appellants overdraft and other banking facilities on the security of first legal mortgages of their respective properties abovementioned. Upon the respective appellants' acceptance of the respondent's offers, the latter lodged caveats against their said properties. None of the facilities was drawn down even after a lapse of more than a year after acceptance. This was because of a disagreement between the respondent and the appellants as to whether certain conditions precedent to drawdown had been satisfied.

3 The appellants finally terminated the three facility agreements on 7 October 2002. Despite the appellants' repeated demands, the respondent refused to withdraw the caveats it had lodged against the properties. It took the position that it was not obliged to do so until it had been paid certain cancellation and legal fees provided for under the facility letters. Meanwhile, because of the caveats, the appellants could not take up offers of refinancing from certain financial institutions at rates of interest lower than those then charged by its lenders.

4 By Originating Summonses Nos 257, 258 and 259 of 2004, the appellants applied to the High Court for orders, *inter alia*, that the respondent withdraw the caveats and that there be an inquiry as to the damages to be paid by the respondent to the appellants attributable to the respondent's wrongful refusal to withdraw the caveats.

5 The respondent withdrew the caveats on 30 June 2004 without prejudice to its contention that it was entitled to lodge them as it did. Subsequently, when the summonses came on for hearing,

Belinda Ang Saw Ean J held that the respondent had no security interest in the properties and that the caveats had been lodged without reasonable cause. She further ordered that an inquiry be conducted as to the damages and compensation to be paid by the respondent to the appellants.

6 The inquiry in respect of all three originating summonses was heard by Assistant Registrar David Lee. There were two main heads of claim. One was for compensation for the difference between the higher rate of interest that the appellants continued to pay to their lenders and the lower rates of interest which, but for the caveats, they would have enjoyed under the terms of the offers of refinancing from certain financial institutions. (Included in this claim was the legal costs in the abortive refinancing.)

7 The learned assistant registrar ("AR") disallowed the appellants' claim for the interest differential in respect of 77 Syed Alwi Road for lack of evidence that the appellants had approached other lenders for refinancing. However, he allowed in part such claim by the appellants in respect of 150 Braddell Road (as to 40% of the claim) and 26F Poh Huat Road (as to 60%).

8 I increased the award in respect of 150 Braddell Road to 80% of the amount claimed and in respect of 26F Poh Huat Road to 100% of the claim. The appellants dropped their appeal against the learned AR's disallowance of their claim in respect of 77 Syed Alwi Road.

9 The other main head of claim was in respect of losses suffered by the appellants, HSF and LSK, arising from the forced sale by The Bank of East Asia ("BEA") of a property which HSF and LSK jointly owned at 179 Syed Alwi Road, Singapore 207715. This property was not among the three properties earlier mentioned against which the respondent lodged caveats. It was mortgaged to BEA to secure overdraft facilities which BEA had extended to HSF and LSK. HSF asserted that the respondent had been informed that the refinancing of 26F Poh Huat Road was in part to obtain funds with which to reduce the overdraft owing to BEA. The respondent's refusal to withdraw the caveats prevented HSF and LSK from refinancing with Hong Leong Singapore Finance Ltd ("Hong Leong") as a result of which BEA, as mortgagee of 179 Syed Alwi Road, disposed of the same by a forced sale at a price allegedly $1.2m lower than the property could have fetched in the open market between willing seller and buyer. Included in this claim were certain expenses in connection with the foreclosure (amounting to $163,054.50) as well as the legal costs incurred by the appellants in defending BEA's foreclosure proceedings (in the amount of $7,482.50). The learned AR disallowed this head of claim and I upheld his decision on appeal.

10 The appellants, HSF and LSK, having appealed against my decision in Registrar's Appeal No 355 of 2005 (with regard only to this head of claim), I set out below my grounds of decision.

11 The starting point is s 128(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the Act") which provides:

> Any person who wrongfully, vexatiously or without reasonable cause —
>
> (*a*) lodges a caveat with the Registrar;
>
> (*b*) procures the lapsing of such a caveat; or
>
> (*c*) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,
>
> shall be liable to pay compensation to any person who sustains *pecuniary loss that is attributable*

to an act, a refusal or a failure referred to in paragraph (a), (b) or (c).

[emphasis added]

The question therefore was whether the losses suffered by the appellants from the forced sale of 179 Syed Alwi Road (together with the expenses and legal costs earlier mentioned) were attributable to the wrongful refusal by the respondent to remove its caveat against 26F Poh Huat Road.

12 The ambit of the statutory remedy in s 128(1) was considered by the Court of Appeal in *Khushvinder Singh Chopra v Mookka Pillai Rajagopal* [1999] 1 SLR 589. The facts of the case were as follows. The appellant was an advocate and solicitor. He obtained an option to purchase a certain property at Jalan Seaview ("the property") from his clients for whom he had earlier acted in respect of certain abortive transactions in relation to the same property. The option was signed by only two out of three co-owners. Despite objections from the third owner, he exercised the option and lodged a caveat against the property to protect his interest as purchaser. (This was in addition to another caveat he had lodged ten days earlier on the strength of the option.)

13 Meanwhile, the three co-owners entered into another agreement to sell the property to two purchasers jointly ("the purchasers"). Subsequent to the agreement with the purchasers, the appellant prepared an agreement expressed to be supplemental to the option and this was signed by all three co-owners. This supplemental agreement provided for the sale of the property to the appellant. The co-owners (respondents) subsequently refused to proceed further with the sale and the appellant sued them for specific performance. The respondents alleged undue influence and counterclaimed damages for the loss caused by the appellant's refusal to withdraw his caveats. The Court of Appeal in *Mookka Pillai Rajagopal v Khushvinder Singh Chopra* [1996] 3 SLR 457 ordered, *inter alia*, that the appellant withdraw his caveats and directed that an inquiry be held as to the compensation, if any, pursuant to s 128 of the Act.

14 At the inquiry (reported at [1998] 1 SLR 186), the respondents claimed compensation for, *inter alia*, the following:

(a) Additional interest that the respondents had to pay in respect of two judgment debts. (The property was attached by writs of seizure and sale after the appellant lodged his caveats.) The respondents contended that the extra interest paid on the judgment debts could have been saved had the completion of the sale to the purchasers not been blocked by the appellant's caveats.

(b) Additional interest paid on a term loan secured by a mortgage on the property. Here again the respondents contended that but for the appellant's caveats, the sale of the property would have been completed timeously and they would then have been able to redeem the mortgage, thereby saving the additional interest.

15 Chao Hick Tin J (as he then was) held (inferentially) that foreseeability was the test for determining whether the pecuniary losses claimed were attributable to the wrongful refusal or failure to remove the caveats. His Honour reasoned (at [9]) as follows:

Section 128(1) does not elaborate what is 'pecuniary loss attributable to (the caveat)'. No case had been cited to me which touched on these words of the section. The ordinary literal meaning of the word 'attribute', as a verb, is 'caused or brought about by'. While I can understand the argument that had the caveats been removed, the sale would have been completed, the defendants would have the funds to enable the second and third defendants to pay up the debt

> and the additional interest would not have arisen, I do not think this loss was caused by or could be attributed to the caveats. The legislature could not have intended to make a caveatee liable for all consequences that may be said to flow from a caveat, no matter how remote or unforeseen those consequences may be.

Accordingly, he decided that compensation for the interest on the judgment debts was irrecoverable as the loss was "wholly unforeseen", the property not having been attached by the writs of seizure and sale when the appellant lodged his caveats.

16 However, the learned judge allowed compensation for the additional interest in respect of the outstanding mortgage on the property. He reasoned that in acting for the respondents in the abortive transactions, the appellant would have known about the mortgage. Therefore, the additional interest payable on the mortgage as a result of delay in completing the sale was clearly a foreseeable loss. The Court of Appeal affirmed the holding of Chao J, disallowing compensation for the interest on the judgment debts. However, it reversed the learned trial judge's holding that the additional interest in respect of the mortgage was recoverable. While agreeing that it was foreseeable that additional interest would be incurred, the Court of Appeal held ([12] supra at [16]) that the loss was not caused by the presence of the caveats but by the respondents' "lack of funds and financial resources". In arriving at its decision, it followed the rule laid down by the House of Lords in *Owners of Dredger Liesbosch v Owners of Steamship Edison* [1933] AC 449 ("*Liesbosch*") that a defendant was not responsible for damage attributable to the claimant's impecuniosity.

17 On the basis of the foregoing, whether or not the losses suffered by the appellants from the forced sale of 179 Syed Alwi Road were attributable to the wrongful refusal by the respondent to remove its caveat against 26F Poh Huat Road depended on the answers to two questions:

> (a) Whether it was foreseeable to the respondent that its refusal to withdraw the caveat would result in BEA foreclosing on the mortgage over 179 Syed Alwi Road.
>
> (b) If so, whether as a matter of law the cause of the appellants' loss was their own impecuniosity rather than the respondent's wrongful refusal to withdraw the caveat.

On both those questions, the learned AR decided in favour of the respondent.

18 Question (a) was dealt with as one of fact, *viz*, whether the respondent knew that part of the facilities to be obtained on the refinancing of 26F Poh Huat Road was to be paid to BEA to forestall the foreclosure of 179 Syed Alwi Road. It was, I believe, assumed (and in my view, correctly) that nothing short of knowledge would suffice to satisfy the requirement of foreseeability in the particular circumstances of the case.

19 Curiously, the learned AR formulated the test of foreseeability as a dual test, *viz* (at [16] of his grounds of decision):

> First, whether the [appellants] informed the [respondent] that the refinancing of the three properties was to allay the foreclosure of [the] 179 Syed Alwi Road property. Second, whether the facts and circumstances allow an inference that the [respondent] had received this information – that the refinancing was necessary to stop the foreclosure. Since both elements form the cornerstone of foreseeability, it is my view that the [appellants] have to prove both factors cumulatively to the satisfaction of the Court, on a balance of probabilities, in order to succeed in proving causation.

With due respect to the learned AR, I did not think there was a need to satisfy both tests. It was clear that satisfaction of the first test was enough and that the second test would apply only where the first was not satisfied.

20 It may be that what the learned AR intended to ask under the first test was whether or not the appellants had sent out any communication to the respondent to inform the respondent of the purpose of the refinancing. Given that proof of the appellants' mailing was not conclusive of the respondent's receipt, the second test would be understandable where there was doubt as to its receipt.

21 In any event, despite the formulation of the dual test, no harm was done since the learned AR answered both questions in the negative. (It would have been otherwise if finding that only one test was satisfied, he had held that the foreseeability test had not been met.) The learned AR's finding on a balance of probabilities that the respondent did not have the requisite knowledge was made after careful consideration and evaluation of the evidence. I saw no reason to disturb the finding. It would perhaps be useful if I briefly recapitulated the main points the learned AR made in arriving at his finding and added any other considerations which I took into account in reviewing the evidence.

22 The learned AR did not accept the evidence of HSF, the key witness for the appellants, that he had delivered a letter of 13 July 2001 to the respondent in which the following paragraph appeared:

> And a overdraft facility of $700,000/- for personal use to support for servicing bank interest for 4 Storey Building at 179, Syed Alwi Road. Reason is the OD line from Bank of East Asia for 179 Syed Alwi Building to use for development of 8 Storey Apartment project at 47, Lengkong Empat.

The exhibit in his affidavit purporting to be a copy of the 13 July 2001 letter was actually a later printout from his computer to which he had appended his signature only in 2004. Worse still, the respondent's fax number shown on the letter contained a prefix "6". As the prefix was introduced in Singapore only on 1 March 2002, its inclusion in the letter of 13 July 2001 obviously cast grave doubts on the authenticity of the letter. Quite rightly, the learned AR expressed doubt whether the letter had been composed in July 2001 in the first place. He also raised doubt as to what the contents of the "original letter" to the respondent were given HSF's unsatisfactory evidence that he could have used the soft copy of a later version and pasted in the heading for the 13 July 2001 letter. For the foregoing reasons, the learned AR found "that the [appellants] had not established that the letter of 13 July 2001 had been sent to the [respondent] as [HSF] had alleged".

23 The learned AR found the respondent's key witness, Diana Tan, to be extremely evasive and on two occasions to have lied in her affidavits. He therefore held that she was not a credible witness. In those circumstances, he went on to consider whether her lies might in fact corroborate the evidence of HSF. However, after considering the principles set out in *R v Lucas* [1981] QB 720, the learned AR decided that Diana Tan's lies did not relate to the material issue whether the respondent had been told that its loan was needed to forestall the foreclosure of 179 Syed Alwi Road.

24 More importantly, the evidence of HSF as to conversations he had with Diana Tan (informing her of the purpose of the refinancing) could not bear scrutiny when considered in the light of contemporaneous documentary evidence. As pointed out by the learned AR, in none of the correspondence between the appellants and the respondent at the material time did the appellants mention to the respondent that they needed the refinancing from the respondent to forestall the foreclosure. Leaving aside the disputed 13 July 2001 letter, there was not even a single mention of

any prospective refinancing being used for payment to BEA. HSF attempted to provide an explanation for the omission by saying that if he had informed the respondent through correspondence that he was seeking the facilities to solve his financial problems with other banks, the respondent would not have agreed to lend him the money.

25 Although at first blush the explanation might have seemed reasonable, the learned AR found it to be "shadowy at best" and for good reason:

(a) It did not explain why he similarly omitted to mention the prospect of obtaining refinancing from the respondent in his series of correspondence with BEA when he was asking for time to reduce his outstanding overdraft with the latter. As BEA's solicitors, Drew & Napier LLC, recounted in their letter of demand dated 28 May 2003 to the appellants, on three different occasions between 25 June 2002 and 29 August 2002 the appellants had written to BEA to inform them about the prospect of obtaining money from various sources to reduce the overdraft. In particular:

(i) on 25 June 2002, the appellants mentioned moneys coming in from a development project at Lorong Empat;

(ii) on 29 June 2002, the appellants wrote to inform BEA about a prospective loan of $740,000 from United Overseas Bank; and

(iii) on 29 August 2002, they wrote again to inform BEA about the prospect of a loan of $400,000 from Hong Leong.

And yet, while the appellants were desperately trying to reassure BEA of the prospect of incoming funds, they did not mention the prospect of refinancing from the respondent at all. (This reason was perhaps not quite as cogently expressed in the learned AR's grounds of decision as in the respondent's written submissions in the appeal before me.)

(b) Even assuming for the moment that HSF's explanation was true, (*ie*, that he omitted to mention the purpose of the refinancing for fear that the respondent would not agree to lend) by 7 October 2002 when he wrote to terminate the facility agreement with the respondent, there was no longer any reason to be afraid. And yet, in his letter of 5 November 2002 in which he was pressing for the withdrawal of the caveats, there was still no mention that he needed refinancing with another lender in order to stave off foreclosure.

(c) This was all the more incredible for another reason. HSF had alleged in his seventh affidavit filed on 21 April 2005 that during a conversation with Diana Tan on 22 October 2002 he had pleaded with her to withdraw the caveats as he urgently needed funds from facilities he intended to obtain from other banks in order to reduce the overdraft with BEA or risk losing 179 Syed Alwi Road. And yet, when in his letter of 5 November 2002 he recounted in detail the said conversation of 22 October 2002 with Diana Tan, inexplicably he omitted to recount that critical part of the conversation. That would have been the most cogent reason to persuade the respondent to withdraw the caveats if indeed he had told Diana Tan as alleged.

26 At the appeal, two other reasons for doubting the evidence of HSF were advanced by the respondent:

(a) HSF claimed to have told James Tan (the solicitor acting for both parties in the proposed refinancing) in or about July or August 2002, of the appellants' difficulties with BEA. This was no

different from writing to the respondent as it would similarly risk jeopardising the prospect of obtaining refinancing from the respondent. It was doubtful that such a conversation did take place and no evidence was given by James Tan to corroborate HSF's evidence. (Apparently neither the appellants nor the respondent was able to obtain his evidence.)

(b) In none of the appellants' affidavits filed in Originating Summons No 259 of 2004 before Ang J did the appellants make a single reference to having informed the respondent about the difficulties with BEA and the risk of foreclosure. It was only after Ang J ordered an inquiry as to damages that HSF in his affidavit of 21 March 2005 made his allegations as to the conversations he had with Diana Tan and James Tan.

27 For all the foregoing reasons, I agreed with the finding of the learned AR that HSF never told the respondent about the impending foreclosure of 179 Syed Alwi Road at the material time. Before I leave the subject, I should also mention a point which the appellants made much of. This was the destruction of the respondent's credit approval file after litigation was contemplated by the appellants.

28 Although the respondent sought to downplay it as an innocent mistake, it was tempting, as the learned AR observed, to draw adverse inferences against the respondent for that act. The appellants argued that but for its destruction, the files would most likely have contained the 13 July 2001 letter and that it also would have contained correspondence between Diana Tan and the respondent's credit approval department on the specific purpose of the overdraft sought to be obtained from the respondent on the security of 26F Poh Huat Road.

29 I note in passing that, somewhat at odds with their contention that the 13 July 2001 letter would most likely have been in the credit approval file but for its destruction, the appellants argued (at para 114 of their written submissions before me) that "there [was] a high chance that the 13 July 2001 letter may not have been filed in any of the [respondent's] files" as the credit approval file was opened on or about 7 August 2001. Be that as it may, as the learned AR rightly observed, even if an adverse inference was drawn that the 13 July 2001 letter had indeed been given, that only went halfway towards establishing the appellants' case that the respondent had the requisite knowledge. As the learned AR stated at [31] of his grounds of decision:

> The remaining half … is for the [appellants] to show what the contents of that letter were. The [appellants] did not discharge this burden by adducing the 13 July 2001 letter which I could not place any weight on.

30 I would go further to say that even if the text of the disputed letter was as exhibited by the appellants, the relevant paragraph merely stated that the overdraft facility of $700,000 was for servicing interest in respect of 179 Syed Alwi Road. It is quite a stretch to suggest that the letter constituted notice to the respondent that there was a risk of foreclosure if the refinancing (whether from the respondent or some other lender) did not materialise.

31 As for the alleged destruction of likely correspondence between Diana Tan and the credit approval department on the purpose of the overdraft, at most such correspondence would have stated the purpose set out in the 13 July 2001 letter (assuming that letter to have been given). It does not stand to reason that the appellants could have stated that the overdraft was to forestall foreclosure of 179 Syed Alwi Road as that would have jeopardised any chance of their obtaining the overdraft from the respondent. Further, if the overdraft was to be for a specified purpose, it is strange that the respondent's letter of offer was silent on it. For the foregoing reasons, the destruction of the credit approval file did not help establish the appellants' case that the respondent

knew of the risk of foreclosure.

32 Overall, upon a review of the evidence, I saw no reason to disagree with the finding of the learned AR that: (a) the appellants did not inform the respondent that the refinancing was to forestall foreclosure of 179 Syed Alwi Road; and (b) that the respondent had no knowledge of the risk of such foreclosure. For completeness, I should perhaps add that, in my view, the respondent could not reasonably have foreseen that its refusal to remove the caveat in respect of 26F Poh Huat Road would result in the foreclosure of 179 Syed Alwi Road. Accordingly, for the purposes of s 128(1) of the Act, the loss occasioned by the foreclosure was not attributable to the respondent's refusal to withdraw the caveat.

33 In view of this conclusion, strictly, it would not be necessary to consider the remaining question, *viz*, whether as a matter of law the cause of the appellants' loss was their own impecuniosity rather than the respondent's wrongful refusal to withdraw the caveat. Nevertheless, in view of the appellants' further appeal, it would be well to cover the ground.

34 As mentioned earlier, the learned AR answered this question in favour of the respondent following the case of *Liesbosch* ([16] *supra*) which he accepted was binding upon him by reason of our Court of Appeal's adoption of the same with approval in *Khushvinder Singh Chopra v Mookka Pillai Rajagopal* ([12] *supra*). The appellants contended before me that the learned AR erred in applying *Liesbosch* to the case at hand.

35 In *Liesbosch*, the vessel *Edison* fouled the dredger *Liesbosch*'s moorings at Patras Harbour and carried her out to sea and sank her. Liability was admitted by the owners of the *Edison*. The owners of the *Liesbosch* had a contract with the Patras Harbour Commissioners for some construction work in the harbour for which the dredger was used. The ordinary measure of damages was the cost of buying a similar vessel, the cost of getting her to the *Liesbosch*'s old moorings and any loss of profit consequent upon the disruption of commercial operations while the substitute vessel was being obtained and delivered. However, the plaintiffs contended for a different measure of damages.

36 Although substitute dredgers were available, the plaintiffs could not afford to buy one. Instead, they hired a dredger from Italy, the *Adria*, which was larger than the *Liesbosch* and more expensive to operate. It also commanded a high rate of hire. Eventually, the Patras Harbour Commission assisted the plaintiffs in purchasing the *Adria*. The plaintiffs claimed damages based on their actual loss and expenditure, *viz*, the cost of hire incurred prior to the purchase of the *Adria*, the purchase price of the *Adria* and the extra cost of working her as compared with the *Liesbosch* and the lost profit during the disruption to their work.

37 The House of Lords held that the measure of damages was the value of the *Liesbosch* to her owners as a profit-earning dredger at the time and place of her loss and would include a capital sum comprising:

(a) the market price on the date of the accident of a comparable dredger;

(b) the cost of adapting the new dredger and of transporting and insuring her from her moorings to Patras Harbour; and

(c) compensation for disruption and loss suffered by the owners of the *Liesbosch* in performing their contract from the date of accident to the date on which such substitute dredger could reasonably have been available for use at Patras Harbour. Lord Wright characterised the special loss claimed by the plaintiffs as loss incurred through the impecuniosity of the plaintiffs as

> "a separate and concurrent cause, extraneous to and distinct in character from the tort" (at 460).

38 The appellants in the present case sought to distinguish *Liesbosch* on two grounds. Firstly, the appellants' counsel submitted that, unlike in *Liesbosch*, the appellants' impecuniosity was clearly traceable to the respondent's refusal to withdraw the caveats. Secondly, it was submitted that the application of the *Liesbosch* principle should be restricted to cases where the impecuniosity was unforeseeable.

39 In regard to the first ground, I do not think it could be seriously argued that the respondent caused the appellants' impecuniosity. The appellants were already in dire financial straits when they sought refinancing from the respondent. In particular, their overdraft account with BEA was overdrawn beyond agreed limits. Indeed, their case was that the respondent knew that the purpose of the refinancing was to meet the demand by BEA to reduce the outstandings under the overdraft.

40 The second ground for distinguishing *Liesbosch* was what had been suggested by Donaldson LJ in *Dodd Properties Ltd v Canterbury City Council* [1980] 1 WLR 433 at 459 that the principle should be limited to cases where the impecuniosity was unforeseeable. More significantly, in *Lagden v O'Connor* [2004] 1 AC 1067 (a case not cited by counsel), the House of Lords held that the rule in *Liesbosch* that a defendant is not responsible for damage attributable to the claimant's impecuniosity could no longer be regarded as good law. It was said that the law had "moved on" and that the correct test today is whether the loss was reasonably foreseeable. Lord Hope said (at [61]):

> The wrongdoer must take his victim as he finds him: talem qualem, as Lord Collins said in the *Clippens Oil* case [1907] AC 291, 303. This rule applies to the economic state of the victim in the same way as it applies to his physical and mental vulnerability.

41 Nevertheless, the law in Singapore is still as stated by the Court of Appeal in *Khushvinder Singh Chopra v Mookka Pillai Rajagopal* ([12] *supra*). Thus, even if, contrary to the learned AR's finding and mine, it was foreseeable that the respondent's refusal to withdraw the caveat could result in BEA foreclosing on the mortgage, I am bound by authority to deny recovery of the loss suffered by the appellants from the forced sale of the property.

42 For the foregoing reasons, I dismissed the appeal with regard to the head of claim in respect of losses arising from the forced sale of 179 Syed Alwi Road. Overall, taking into account the successful appeals with regard to the other head of claim in Registrar's Appeals Nos 355 of 2005 and 356 of 2005, I awarded the appellants 50% of their costs of the appeals.