IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1986] SGHC 55

OS 484/1986

Between

Singapore Finance Ltd

… *Plaintiff*

And

Ben's Electrical Engineering Pte Ltd
Chong Kok Meng
Toh Whee Lim
Johnny Tan Thiam Huat

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Singapore Finance Ltd v Ben's Electrical Engineering Pte Ltd and Others

[1986] SGHC 55

OS 484/1986
Chan Sek Keong JC
30 July 1986

1) This is a summons by the Plaintiff against the 1st Defendant for/ inter alia, delivery of possession of the premises known as 152, Paya Lebar Road, #06-01, Citipoint Industrial Complex, Singapore, which had been mortgaged by the 1st Defendant to the Plaintiff to secure a loan of $520,000 payable in instalments. The premises are registered land subject to Land Titles Act. The 1st Defendant defaulted in the payment of certain instalments whereupon the Plaintiff demanded (as they were entitled to do under the terms of the mortgage) immediate payment of the balance of the loan.

2) A notice dated 20 March 1986 sent by A.R. registered post gave the 1st Defendant 7 days to settle its outstandings, failing which the Plaintiff threatened to institute proceedings to recover the outstandings and to take any other action necessary to enforce their rights under the mortgage. Another notice dated 14 April 1986 was sent by the Plaintiff to the 1st Defendant by A.R. registered post and this notice gave the 1st Defendant one month's notice from the date "hereof" (i.e. 14 April 1986) to deliver up vacant possession of the premises to the Plaintiff.

3) Counsel for the Plaintiff appeared before me on 25 July 1986. As counsel was unable to satisfy me that the Plaintiff had complied with Section 65(2) of the Land Titles Act ("the LTA") (the notice having been sent by A.R. registered post), it would have been deemed to have been served on the mortgagor at the time the registered letter would in the ordinary course have been served, i.e. not earlier than the following day: see Section 72(4) of the Law of Property And Conveyancing Act ("the CLP"), I adjourned the matter for further hearing on 28 July 1986.

4) At the resumed hearing, counsel for both the Plaintiff and the 1st Defendant appeared but the latter still had no instructions from clients.

5) Counsel for the Plaintiff contended that there was substantial compliance with Section 65(2) in that more than one month had elapsed since the notice was given. He referred me to Fisher & Lightwood on Mortgages, 9th edn. at page 364 where it is stated that "The object of the notice is to guard the rights of the mortgagor, and if this object is substantially attained, the court will not, as against a bona fide purchaser, minutely criticise the exact terms of the notice. A notice is not bad if it overstated the principal. A sale, not made until the expiration of the proper interval after the service or delivery of the notice has been held good, though the notice declared the intention to sell when that interval had elapsed from its date." In my view, the statements quoted above do not assist the Plaintiff as they deal with the rights of a purchaser upon a sale by a mortgagee. Counsel also submitted that since the 1st Defendant was not contesting the claim, the Plaintiff should have his order. This submission also has no substance.

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6) Since this is one of several matters which came before me in this state (i.e. where notices given by mortgagees to enter into possession were each of less than one month's duration), and "it raised a question on the construction of a statute under which daily transactions are taking place" (see Swinden Eady J. in Barker v. _ Illingworth 1908 2 Ch. 20 at page 22), I felt that I should express in writing my views on the law so that conveyancing lawyers should not misconstrue the rights to possession of mortgagors and mortgagees of registered land.

7) Under a common law mortgage, the mortgagee may enter into possession of the mortgaged property immediately after the execution of the mortgage by virtue of the estate thereby vested in him. The mortgagor may remain in possession only until possession is demanded by the mortgagee - see Fisher & Lightwood, ibid, at page 314. If a mortgagor wishes to remain in possession and to protect himself against immediate dispossession by the mortgagee/ he should seek a contractual arrangement to protect his possession. He may become a tenant of the mortgagee and one of the ways of effecting this relationship is to include an attornment clause in the mortgage. Such an attornment clause may require the mortgagee to give the mortgagor a period of notice so as to give some measure of protection to the mortgagor: see Hinckley Building Society v. Henny (1953) 1 All E.R. 515, where the attornment clause provided at least seven days' notice in writing of the intention of the mortgagee to determine the tenancy of the mortgagor and enter upon the property, and Upjohn J. held that the mortgagee was not entitled to possession when he issued a summons for possession without giving the requisite notice, notwithstanding that the borrower did not appear at the hearing.

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8) Since 1956, the LTA has introduced a system of land titles registration in Singapore which, inter alia, has the effect of altering the rights of mortgagees. As far as mortgages are concerned, the LTA gives statutory recognition to the fundamental purpose of a mortgage, which is to provide security. The mortgagee under the LTA is no longer vested with the legal estate and with it the concomitant right of immediate possession. He merely has a security interest in the property. He is no longer entitled to possession except in accordance with Section 65(1) of the LTA and he is not entitled to exercise the power of entry into possession once it has arisen except as prescribed by Section 65(2) of the LTA. As Baalman said, "any right which the mortgagee has to enter into possession of the mortgaged land must rest entirely on this statutory power and entry into possession of land under this [LTA] must be preceded by the default and by notice, prescribed by this section.11: The Singapore Torrens System, 1961, at page 139.

Section 65 provides as follows:

"(1) If default is made in payment of the interest, principal, or other money, secured by a mortgage or charge, or in payment of any part thereof, the mortgagee or chargee shall, as against the mortgagor or chargor and those claiming through or under him, be entitled to enter into possession of the mortgaged or charged land and to receive the rents and profits thereof.

(2) The power of entry into possession conferred by this section shall not be exercised until one month's notice has been given to the mortgagor or chargor."

9) Section 65(2) is capable of two constructions: (1) the power to enter possession is exercisable only when a notice of one month (or not less than one

month) has been given to (i.e. received or deemed to have been received by) the mortgagor, or (2) the power is exercisable so long as one month has elapsed after a notice, whatever its duration, of such intention has been given to the mortgagor. Which is the true construction?

10) In my view, the beginning of an answer will be found by considering the language used in Section 25 of the CLP which regulates the power of sale of a mortgage under a common law mortgage. It is common knowledge that the restrictions contained in Section 25 of the CLP are invariably varied or altogether excluded from the forms of mortgages currently used in Singapore. But this practice does not in any way affect the meaning of the provision.

11) It reads as follows:

"25. A mortgagee shall not exercise the power of sale conferred by this Act unless and until -

(a) notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage is in arrear and unpaid for one month after becoming due; or

(c) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon."

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12) It requires the service of a notice on the mortgagor and the lapse of 3 months after such service. It does not say that the notice itself must be of a specific duration. The language of Section 25 of the CLP is quite different from that of Section 65(2) of the LTA. The draftsman of the LTA was aware of the existence of the CLP as its provisions were made applicable to land title mortgages (except to the extent where they conflict with any provisions in the Act) - see Sections 3(1) and 60(4) of the LTA. If the draftsman had intended that Section 65(2) should have the same meaning as Section 25 of the CLP, it would have been a simple matter to use the language of Section 25 of the CLP in Section 65(2) of the LTA. Instead, the draftsman has chosen language which is more apt to recovering of possession from a tenant where a notice of a specified duration is required. In substance, to give a notice to a mortgagor with a view to entering into possession and thereby dispossessing the mortgagor is no different from giving a notice to quit to a tenant and thereby dispossessing the tenant: see Baalman ibid, at page 131 where he commented that Section 65(2) "equates a mortgagee's powers of obtaining possession to those of a lessor".

13) When read with Section 72(1) of the CLP, the meaning of Section 65(2) of the LTA becomes abundantly clear. Section 72(1) of the CLP provides that any notice required or authorised by [the LTA] to be served shall be in writing. A Section 65(2) notice must be given in writing and it must be a notice of one month. It is not a notice to the mortgagor of the mortgagee's intention to take possession followed by a lapse of one month.

14) For the above reasons, I hold that the first construction gives effect to the intention of Section 65(2) and that a failure by a mortgagee to comply with that section gives him no right to enter into possession of the mortgaged property.

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15) The failure of the 1st Defendant to defend this summons is not a sufficient reason for me to allow the application. Under 0.83 r.3(3) of the Rules of the Supreme Court, where the plaintiff claims delivery of possession, the affidavit must show the circumstances under which the right to possession arises. The affidavits filed by the Plaintiff do not show that this right has arisen.

16) The summons is dismissed.

Chan Sek Keong JC

Koh Juay Kherng for Plaintiffs
Shyam Kumar for 1st and 2nd defendants

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