IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 1

Suit 3649/1983, Suit 2046/1987

Between

Goodrich Development Pte Ltd

… Plaintiff

And

Habib Bank Limited

… Defendant

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Goodrich Development Pte Ltd v Habib Bank Limited

[1992] SGHC 1

Suit 3649/1983, Suit 2046/1987
Lai Siu Chiu JC
02 January 1992

1 **Judgment:**

2 Goodrich Development Pte Ltd (the Plaintiffs) were incorporated on 29 July 1981 by Messrs. Mallal & Namazie in particular by Mr. Mirza Namazie (DW2) for the specific purpose of buying three pieces of land at Choa Chu Kang namely Lots 2, 3-2 and 3-4 Mukim 19 ('the CCK land'). DW2 also acted for the Plaintiffs in their purchase of the same as well as for the mortgagees Habib Bank Limited (the Defendants) for the loan which they extended to the Plaintiffs to finance the purchase.

3 Ang Yok Kok (PW2) who at the time of the Plaintiffs' incorporation was and still is a director testified that the CCK land was purchased for $1,292,700 and he paid the 10% deposit (DB-10). The Plaintiffs through DW2 (PB-9) applied to and obtained from the Defendants (PB-12/13) a term loan for six months of $1,350,000. (the loan) secured by a legal mortgage (the Mortgage) for $5m (PB-17/34) on inter alia the following terms and conditions:-

4 1. 50% of the loan would be repaid three months from the date of the Mortgage and the balance six months thereafter.

5 2. Interest charged would be 3 1/2% over the Defendants' prime lending rate subject to a minimum of 18% per annum.

6 3. The Plaintiffs would pay a commitment fee of 1% of the loan namely $13,500.

7 By a resolution passed at the first meeting of the company's board of directors on 4 August 1981 (PB-10/11) the Plaintiffs inter alia:-

8 1. were empowered to purchase the CCK land at the price of $1,292,700;

9 2. were empowered to obtain a loan of $1,350,000 from the Defendants;

10 3. were empowered to execute a mortgage for $5m in favour of the Defendants;

11 4. agreed to grant an Option valid for three months to Mr. D.L. Chen for the sale of the CCK land at the price of $2m subject to existing tenancies.

12 Both PW2 and PW1 (the Plaintiffs' other director Mok Kam Seng) testified that the Plaintiffs applied for a short term loan from the Defendants because they expected to sell and complete the sale of the CCK land within six months because they received many inquiries from prospective buyers. Their optimism was fuelled by a valuation report dated 7 July 1981 (PB-3/6) of the CCK land done by Colliers Goh & Tan which placed a fair market value of the same at $16m (free from encumbrances with vacant possession) and at $8m (subject to existing tenancies). They had bought the land at a bargain price.

13 It was alleged by PW1 and PW2 that when they executed the Mortgage on the Plaintiffs' behalf before DW2 on 4 August 1981 that both of them

Version No 1: 11 Sep 2026 (01:05 hrs)

objected to the figure $5m being inserted in the instrument when the Plaintiffs were only borrowing $1,350,000. They claimed DW2 told them that unless they signed the Mortgage in the form as prepared, the Defendants would not release the loan, so they signed.

14 On 12 August 1981 PW1 and PW2 signed the Defendants' letter of guarantee in a printed form before DW2 who they alleged handed them a copy (exh P1) after signing. Both testified that at the time they signed exh P1, the relevant blanks had not been filled in, namely, the Plaintiffs' name and the figure $5m; the date was handwritten by DW2. They said they expressed surprise that they were required to sign a guarantee and when they objected, DW2 said it was a mere formality required by the Defendants, otherwise the Defendants would not release the loan. The Defendants produced the original signed guarantee at the trial (exh D1) which differed from exh P1 in that it had the Plaintiffs' name and the names of PW1 and PW2 and the figure $5m typed in at the relevant blank spaces as well as the date '12 August 1981'.

15 In due course Forms 33 and 34 were filed with the Registry of Companies to evidence the Plaintiffs' charge in favour of the Defendants and the Defendants released a net sum of $1,336,500 to Messrs. Mallal & Namazie being the loan less interest for August 1981 amounting to $13,500 calculated for 20 days based on 18% interest per annum (evidence of DW1). In Mallal & Namazie's statement of account dated 26 August 1981 (PB 60-61) to the Plaintiffs for the sum received from the Defendants, a sum of $23,725 was shown to be deducted as the firm's costs for preparation of the Mortgage on a mortgagees' scale.

16 Under the terms of the Mortgage the Plaintiffs should have paid the first instalment of the loan by 12 November 1981. The Plaintiffs failed to make the

Version No 1: 11 Sep 2026 (01:05 hrs)

payment resulting in a letter of demand dated 7 December 1981 (PB-62) from Mallal & Namazie issued on the Defendants' behalf. The letter gave notice of the Defendants' intention to proceed with a mortgagee's sale of the CCK land under cl 7(15) of the Mortgage if the Plaintiffs did not make immediate payment of what was due. Mallal & Namazie sent a further demand letter on 2 January 1982 (PB-63) to the Plaintiffs enclosing the Defendants' statement of account for the period ending 24 November 1981 in the sum of $1,428,162.72.

17 PW1 and PW2 testified that in early 1982 the Plaintiffs were in financial difficulties as they were not able to resell the CCK land. Further the authorities repeatedly postponed their decision on the Plaintiffs' application for planning approval. They said the proposed sale to a buyer recommended by DW2 fell through so the Plaintiffs decided to develop the CCK land with a partner if a suitable one could be found.

18 Plainly the Plaintiffs could not repay the Defendants' loan. With DW2's assistance in drafting, PW2 wrote a letter on the Plaintiffs' behalf to the Defendants dated 1 March 1982 (PB-65) requesting an extension of time until 4 May 1982 in which to repay the loan. In consideration of the extension of time requested, PW2 offered to the Defendants collateral mortgages on two properties at No.227 Serangoon Road (the Serangoon property) and at Unit 105, 1st Floor, Fook Hai Building (the Fook Hai property). The two properties were not owned by the Plaintiffs, they belonged to Goodrich Realty Pte Ltd (Goodrich) a company of which PW2 was a director. The Defendants on 2 March 1982 (PB-66) accepted the Plaintiffs' proposals and called off the proposed auction of the CCK land scheduled for 4 March 1982.

19 On 3 March 1982 (PB 84-87 and PB 67-83) PW2 and a fellow director executed on Goodrich's behalf a collateral mortgage and an indenture of

Version No 1: 11 Sep 2026 (01:05 hrs)

mortgage respectively of the Fook Hai and Serangoon properties in favour of the Defendants. Both instruments were also executed by PW1 and PW2 on the Plaintiffs' behalf. As with the Mortgage, the consideration stated in both instruments was $5m.

20 On 26 May 1982 (DB-132) the Serangoon property was acquired by the government and a compensation sum of $30,090 was subsequently paid by the Collector in August 1983 (DB-130).

21 The Plaintiffs failed to repay the loan by the extended dateline of 4 May 1982. Before the dateline, on 26 April 1982 (PB-92) Mallal & Namazie wrote on the Defendants' behalf to the Plaintiffs demanding immediate payment of the principal sum due under the Mortgage 'together with all interest accrued thereon' failing which the Defendants would exercise their power of sale as mortgagees. A similar letter was addressed to Goodrich on the same day (PB-93) for the Fook Hai property mortgage. Because of the government acquisition the Defendants through Mallal & Namazie called off the auction (PB-94) of the Serangoon property scheduled to be conducted by Cheong Hock Chye & Co (Pte) Ltd (CHC) on 3 June 1982. On the same day however, CHC attempted to auction the CCK land but because the Defendants' reserve price of $1,600,000 was not obtained, the property was withdrawn (DB-38/39) from sale.

22 On the instructions of Mallal & Namazie, a valuation report for the Fook Hai property was prepared for the Defendants by Associated Property Consultants Pte Ltd on 27 July 1982 valuing the same at $125,000 with vacant possession (PB-96/98). Prior thereto on 5 June 1982 (DB-43) Mallal & Namazie notified Thomas Tham & Partners solicitors for United Overseas Finance Limited the first mortgagees of the Fook Hai property that the Defendants intended to auction the same as a mortgagees' sale.

Version No 1: 11 Sep 2026 (01:05 hrs)

23 PW2 testified that he again approached the Defendants for a further extension of time until 31 December 1982 and in consideration thereof he offered to assign to the Defendants an option (the Option) he had secured to purchase No.5 Dunearn Close, Singapore (the Dunearn Close property). His offer was contained in Mallal & Namazie's letter to the Defendants dated 4 August 1982 (PB-102/103). A second auction of the CCK land fixed to take place on 19 August 1982 was withdrawn by the Defendants on the advice of DW2.

24 PW2 proposed to pay $400,000 or 80% of the sale proceeds of the Dunearn Close property whichever was the greater, to the Defendants on or before 31 October 1982. Should no such payment be received by the Defendants on or before 31 December 1982, then the Defendants were at liberty to exercise their rights as mortgagees. The interest charged by the Defendants would then also be reduced from 3 1/2% to 2% over the Defendants' prime lending rate, subject to a minimum of 18% per annum.

25 On the Defendants' behalf Mallal & Namazie wrote to the Plaintiffs on 7 October 1982 (PB-105/106) agreeing to PW2's request for the extension of time until 31 December 1982 on the terms he had proposed. DW2's letter stated that Thomas Tham & Partners had withdrawn from auction the Fook Hai property scheduled for that afternoon due to Goodrich having paid some part of the outstanding sum due to United Overseas Finance Limited. By then on Mallal & Namazie's advice (DB-82), the Defendants had cancelled their third attempt to auction off the CCK land.

26 Accordingly on 28 October 1982 (PB-107/200) PW2 executed a Deed of Assignment (the Deed) in the Defendants' favour of the Option dated 21 August 1979 for the Dunearn Close property agreeing thereunder to pay the

Version No 1: 11 Sep 2026 (01:05 hrs)

Defendants $500,000 by 31 March 1983. Recital 2 to the Deed referred to the Defendants' advance to the Plaintiffs of $1,350,000 on the CCK land. PW2 did not complete his purchase of the Dunearn Close property and his option money was forfeited by the vendor. According to DW2, the Option which was for one year was conditional upon PW2 obtaining planning approval. The planning approval which was obtained was not that stated in the Option and the vendor rescinded the Option. Although PW2 agreed with Counsel for the Defendants that it was a worthless option, DW2 said he was of the view that it was a valuable option that would be worth some thing and hence its assignment to the Defendants.

27 On 18 November 1982 the Fook Hai property was eventually auctioned off by CHC on Mallal & Namazie's instructions at $145,000 well above the reserve price of price of $130,000 set by the Defendants (DB-96, DB-98).

28 In February 1983 the Defendants received from the sale proceeds of the Fook Hai property a net sum of $77,687.29 (inclusive of the balance of the initial 25% deposit) which sum was appropriated to the Plaintiffs' outstanding account (DB-126).

29 On 31 March 1983 (PB-201) Joe Chellam wrote to the Defendants (the letter) on behalf of the Plaintiffs and two individuals by the names Lim Wee Beng and Chee Kum Ling to whom the Plaintiffs had purportedly given an Option dated 23 March 1983 (the Option) for the sale of the CCK land which the said purchasers had purportedly accepted. The letter went on to say that the Plaintiffs had only received $1,350,000 and not $5m under the Mortgage and it concluded with a request that the Defendants refrain from exercising their mortgagee rights under the Deed.

Version No 1: 11 Sep 2026 (01:05 hrs)

30 It appeared from Mallal & Namazie's reply dated 29 April 1983 (PB-202) to the letter that Joe Chellam refused on the Plaintiffs' instructions to give to the Defendants a copy of the Option. DW2 gave notice that unless the Defendants receive a certified true copy of the Option, the Defendants would exercise their rights as mortgagees. There was no response from Joe Chellam to the Defendants' request prompting a reminder from Mallal & Namazie on 17 June 1983 (PB-204) on which same day a separate letter (PB-205) was sent to the Plaintiffs carbon-copied to Joe Chellam making a demand on the Defendants' behalf for the total amount (not specified) due under the Mortgage failing which the Defendants would proceed to exercise their rights as mortgagees over the CCK land by sale.

31 On 29 June 1983 (PB-206) PW2 replied on the Plaintiffs' behalf to Mallal & Namazie pointing out that there was a discrepancy between the sums stated in the Mortgage and in the Deed.

32 On 20 July 1983 (PB-207) a mortgagee sale of the CCK land was advertised to take place a week later (28 July 1983) conducted by CHC.

33 PW2 consulted another lawyer S B Shah who on 27 July 1983 instituted this Suit and at the same time applied for and obtained an interim injunction to stop the auction sale of the CCK land.

34 The interim injunction order was served on the Defendants on 8 August 1983 by which time according to the evidence of the Defendants' Mrs. Caroline Neo (DW1) DW2 felt that Mallal & Namazie could no longer continue to act for the Defendants and conduct of the Defendants' case was taken over by their present solicitors (practising under their previous name).

Version No 1: 11 Sep 2026 (01:05 hrs)

35 On 10 August 1983 the Defendants' solicitors filed an application to dissolve the Plaintiffs' interim injunction and the same was eventually discharged on 30 August 1984.

36 In November 1983 whilst the interim injunction was in force, the Plaintiffs entered into an agreement with one Martin Lee to sell half the CCK land for the sum of $2m. Martin Lee after paying the initial 10% deposit failed to complete his purchase by the dateline of 15 January 1984. The Plaintiffs forfeited the 10% deposit and thereafter by way of Suit No.1028 of 1984 instituted proceedings against Martin Lee for specific performance of the sale and purchase. On the Plaintiffs' instructions, their solicitors in the abortive sale Messrs. Donaldson & Burkinshaw forwarded to the Defendants' Solicitors on 1 March 1984 (DB-141) the 10% deposit ($200,000) in reduction of the Plaintiffs' outstanding account.

37 The Defendants attempted unsuccessfully to auction the CCK land in November 1984 (DB-146). On 29 May 1986 (DB-158) the government acquired the CCK land and on 26 January 1988 (DB-163) the Defendants' solicitors received from the Land Office the compensation sum of $274,000 less property tax and other outgoings.

38 Counsel for the Plaintiffs informed the Court that the Plaintiffs' appeal against the said award is still pending and the Plaintiffs are a dormant company. The possibility of a bigger compensation award being obtained from the government seems to be the only asset the Plaintiffs have left.

39 The Plaintiffs in their Statement of Claim alleged:-

Version No 1: 11 Sep 2026 (01:05 hrs)

40 a. that the Mortgage did not reflect the sum lent by the Defendants, namely, $1,350,000;

41 b. they were charged by the Defendants' solicitors full mortgagees' scale of costs based on a loan of $5m which the Defendants neither required nor received;

42 c. the mortgages pertaining to the Fook Hai and Serangoon properties were also incorrect reflecting the loan amount of $5m instead of $1,350,000;

43 d. the Defendants breached their agreement not to exercise their rights as mortgagees pursuant to the Deed by auctioning off the Fook Hai property on 18 November 1982 and further thereto failed to render a full and proper account of the sale proceeds thereof to the Plaintiffs;

44 e. the Defendants failed to account to the Plaintiffs for the compensation award for the acquisition of the Serangoon property;

45 f. the Defendants' solicitors' letter of demand dated 17 June 1983 for repayment of the Mortgage sum failed to specify the exact amounts due and outstanding.

46 The Plaintiffs sought a declaration

47 (i) that the Mortgage should be set aside as fraudulent and void or is void and inoperative;

48 (ii) alternatively that the Mortgage should be rectified to reflect the actual advance of $1,350,000 by the Defendants and to have the figure therein of $5m struck out.

Version No 1: 11 Sep 2026 (01:05 hrs)

49 (iii) that they are entitled to the CCK land discharged from all claims under the Mortgage;

50 (iv) for an account of what is due and owing from the Plaintiffs to the Defendants under and by virtue of the Mortgage;

51 (v) for an account of the compensation award for the Serangoon property;

52 (vi) for an inquiry as to whether the sale price of $145,000 obtained from the auction of the Fook Hai property was a fair and proper price;

53 (vii) that upon certification of what is due and owing under the Mortgage and upon payment thereto by the Plaintiffs, that they be allowed to redeem the CCK land;

54 (viii) that the Plaintiffs be indemnified by the Defendants for whatever damages the Plaintiffs may be held liable to pay to Goodrich for the Defendants' improper conduct relating to the Serangoon and Fook Hai properties.

55 In the light of the subsequent acquisition of the CCK land by the government, prayers (iii) and (vii) of the Plaintiffs' claim are now academic and it is safe to assume that prayer (viii) is equally superfluous as no claim was ever made by Goodrich against the Plaintiffs which claims if any are already time-barred by now.

56 The Defence generally denied the Plaintiffs' allegations but admitted that the Mortgage was secured to cover a total sum of $5m, that the forbearance and extension of time agreed to by the Defendants in the Fook Hai and Serangoon properties mortgages only related to the Mortgage and therefore

Version No 1: 11 Sep 2026 (01:05 hrs)

there was no breach by the Defendants in auctioning off the Fook Hai property. The Defence pointed out that the compensation award for the Serangoon property was only paid on 15 August 1983 and disputed the Plaintiffs' entitlement to any of the reliefs claimed. The Defendants counter-claimed (pursuant to an Order of Court dated 18 January 1989) against the Plaintiffs as debtor and against PW2 and PW1 as joint and several guarantors the sum of $2,496,162.41 due and outstanding under the Mortgage as at 30 June 1987 with interest thereon and costs on a solicitor and client basis.

57 The Defendants had commenced separate proceedings in Suit No.2046 of 1987 against the Plaintiffs and the two guarantors (PW1 and PW2) for the said outstanding sum which action was stayed by the aforesaid Order of Court to await the outcome of this Suit. The Defendants' claim in the 1987 Suit was added as a Counterclaim to this action.At the conclusion of the trial, Counsel for the Plaintiffs informed the court that PW1 and PW2 would abide the outcome of this Suit to decide the 1987 suit and in particular their liability thereunder as the 3rd and 2nd Defendants respectively.

58 I now turn to the evidence. I have already touched on PW1 and PW2's evidence concerning the guarantee they executed (exhs P1 and D1). I may add that this aspect of the evidence concerns the Defendants' Counterclaim as neither the Plaintiffs nor PW1 or PW2 complained about the guarantee in the Statement of Claim aside from the allegation in para 2 therein that the same was executed in blank.

59 PW1 could not remember whether he signed one or two guarantees whereas PW2 said he signed only one copy. DW2 testified that the day before PW1 and PW2 signed the guarantee, the Plaintiffs' then manager and adviser Daniel Chen (Chen) called at his office. He described Chen as the main man in

Version No 1: 11 Sep 2026 (01:05 hrs)

the whole transaction even though he was neither shareholder nor director of the Plaintiffs and he believed PW1 and PW2 were Chen's nominees.He said it was Chen who negotiated the purchase of the CCK land, who instructed him to take over the matter as purchaser's solicitors, who approached him on the loan in the first place and who gave him instructions almost all the time. DW2 said that PW1 and PW2 left everything to Chen which fact was not disputed by either PW1 or PW2 in their evidence, confirmed by DW3 and borne out in DW2's subsequent correspondence where there was extensive referance to Chen. Despite his key role in the transaction, Chen was not called as a witness because (according to PW2) he is suffering from Alzheimer's disease and is unable to attend court.

60 Anyhow, on the day in question, DW2 informed Chen that the Defendants required the Plaintiffs' directors to execute a guarantee whereupon Chen asked for a copy stating that PW1 may not agree to sign as he (PW1) only had a nominal interest in the Plaintiffs; DW2 gave Chen a photocopy of the blank printed guarantee.After Chen had left, DW2 said he instructed his secretary Chong Sick Yuen (DW3) to type out the Plaintiffs' name and the words and figure "$5m" on the first page of the printed guarantee.

61 On the following day (12 August 1981) Chen brought PW1 and PW2 to DW2's office to sign the guarantee. DW2 testified that there was no reason for PW1 to come to his office that day other than to sign the guarantee as the mortgage had already been executed by PW1 (on 4 August 1981) in readiness for completion which was scheduled for that afternoon. DW2 showed PW1 and PW2 the guarantee with page one completed, PW2 asked why the sum of $5m was inserted when the Defendants were actually releasing a loan of $1,350,000. DW2 said he explained it was because the mortgage was for $5m and the guarantee followed the mortgage and in any event the Defendants could only

Version No 1: 11 Sep 2026 (01:05 hrs)

claim from the guarantors the amount actually advanced subject to the limit in the guarantee. DW2's assurance to PW2 was confirmed by PW1 who had been a solicitor's clerk for some years. Both PW1 and PW2 then signed the guarantee (exh D1), DW2 witnessed their signatures and he then requested both of them to sign another guarantee (exh D5) which was meant to be his file copy which copy was not completed. He identified exh P1 as a copy of exh D5 although they were not identical as subsequently he had inserted the limit of $5m in exh D5. After PW1 and PW2 had executed exh D1, the date and both their names were typed in by DW3 and after completion, DW2 forwarded a copy of exh D1 to the Plaintiffs with his letter dated 26 August 1981 (PB-60). DW2 said he had no knowledge until it was exhibited in PW2's affidavit filed on 28 July 1983 in this Suit, that the Plaintiffs had exh P1 and he could only surmise that PW1 and or PW2 asked for a copy of the guarantee after signing and instead of being given a copy of exh D1 (which he described as the operative guarantee) they were wrongly given exh D5. DW2 denied the allegations of PW1 and PW2 that:-

62 (i) they were surprised that they had to execute a guarantee let alone that they objected to signing it;

63 (ii) he had told them signing the guarantee was a mere formality;

64 (iii) he had told them if they did not sign the guarantee they would not get the loan;

65 (iv) they told him that they had no assets;

66 (v) PW2 told him that he (PW2) signed the guarantee as otherwise he was afraid his 10% deposit would be forfeited;

Version No 1: 11 Sep 2026 (01:05 hrs)

67 (vi) exh D1 was executed in blank;

68 DW2 said he could only recall PW2 asking whether in the event he (PW2) was made a bankrupt his HDB flat could be forfeited and DW2 advised it could not.

69 DW2 denied the allegation of PW1 and PW2 that he had offered to find or had introduced, buyers to the Plaintiffs. He said that it was only after the Plaintiffs had defaulted in payment of the first instalment under the Mortgage namely some time in December 1981 that with Chen's permission he wrote one letter to a client of his inquiring whether they would be interested to purchase the CCK land. Subsequently, as the Defendants' solicitor when the property was put up for auction, he sent the particulars and conditions of sale to various big developers.

70 DW2's evidence on what transpired at his office on 12 August 1981 was supported by DW3 who then was and still is, his secretary. She confirmed that she was in DW2's room when PW1 and PW2 executed exh D1 and she remembered PW2's inquiry of DW2 first as to the insertion of $5m in exh D1 and then on the risk of his HDB flat being forfeited. She confirmed that the blanks on the first page of exh D1 were typed in by her on DW2's instructions before PW1 and PW2 signed it. She pointed out that if exh D1 was blank as PW2 had alleged, then he would not have been able to ask DW2 why the amount was stated to be for $5m. She testified that PW2 spoke mainly in Mandarin to DW2 who replied in a mixture of Mandarin and English and she helped out in translating.

71 Notwithstanding that the events took place some ten years ago, DW3 said that she remembered this particular transaction very clearly because

Version No 1: 11 Sep 2026 (01:05 hrs)

everything had to be done in a rush including incorporating the Plaintiffs. She said that she did not hand a copy of exh D1 to either PW1 or PW2 that day but she recalled DW2 asking both of them to sign another copy of the guarantee for his file which copy she believed was exh D5. She did not remember handing exh P1 to either of them that day and she said it would not have been possible to have given PW1 and PW2 exh P1 then as it was a double-sided copy which in those days the office photocopier was not capable of reproducing. Her office only acquired a photocopier that could do double-sided photocopying in early 1984. Subsequently she typed DW2's letter dated 27 August 1981 (DB-15) forwarding inter alia exh D1 to the Defendants.

72 DW3 in answer to questions put by the court stated that Chen used to have numerous dealings with her office and in those previous transactions the properties were bought in other parties' names notwithstanding which her office took instructions from Chen.

73 When questioned by Counsel for the Plaintiffs, both DW1 and DW2 agreed that the execution of a guarantee by the Plaintiffs' directors was not one of the five terms which governed the loan as reflected in DW2's letter to the Defendants dated 28 July 1981 (PB-9) which PW1 and PW2 had countersigned as acceptance on the Plaintiffs' behalf (exh D6). However both were of the view that personal guarantees of directors are invariably required by banks for loans to corporate borrowers.

74 Whilst he denied that he had told PW1 and PW2 that if they refused to sign the guarantee they would not get the loan, PW2 said that both of them knew and so did Chen that if they refused to sign, the loan may not go through. Chen had first instructed him to take over acting as purchasers' solicitors on 17 July 1981 when completion then was scheduled for either 20 or 21 July 1981. In the

Version No 1: 11 Sep 2026 (01:05 hrs)

interval between 17 July and the extended completion date of 6 August 1981, DW2 said he had to, take over the papers from the former solicitors, incorporate the Plaintiffs, apply for clearance from the Controller of Residential Property for the company to hold the CCK land and complete both the conveyance as well as the Mortgage. He described the borrowers' position as precarious as if they had not completed, they would have lost their deposit. Because of the urgency of the situation, he did not think that the borrowers were in a position to object to the Defendants' terms for the loan let alone the complaints raised in court that the interest rate was too high or that the Mortgage should be for $2m and not $5m. They had to either accept the Defendants' terms or find another lender which he doubted they had as exemplified by the fact that Chen approached him at the eleventh hour just before completion when the option (which was in PW2's name) had been granted some four months earlier in March 1981. DW2 assumed Chen must have approached other lenders without success. Clearly it was a case of Hobson's choice for the Plaintiffs and the directors.

75 As stated earlier, none of the complaints raised by PW1 and PW2 in their evidence on the guarantee were pleaded (apart from the allegation that they executed a blank guarantee) either in the Plaintiffs' Statement of Claim or in the Reply filed to the Defendants' Defence and Counterclaim. It is noteworthy that a general joinder of issue was pleaded in the Reply even though the Defendants had specifically pleaded (in para 22) of the Counterclaim that both PW1 and PW2 had executed a joint and several guarantee on 12 August 1981 and the reliefs prayed for in the Counterclaim included a claim against both guarantors for the sum owed by the Plaintiffs.

76 I therefore hold that PW1 and PW2 are precluded from alleging that the terms and full import of the guarantee were never explained to them by DW2 let alone that he pressurised them into signing the document.

Version No 1: 11 Sep 2026 (01:05 hrs)

77 As for the allegation raised in para 2 of the Statement of Claim, I am satisfied on the evidence of DW2 and DW3 which I accept that PW1 and PW2 executed exh D1 after DW3 had typed in the relevant insertions and that exh D1 is the operative guarantee and not exhs P1 or D5. It remains a mystery how and when the Plaintiffs procured exh P1 from DW2's office in the light of DW3's evidence that her office photocopier at the material time could not reproduce a double-sided copy.

78 Some criticism was raised by both PW2 and Plaintiffs' counsel on DW2's conduct of the matter for the Plaintiffs. Whilst I am of the view that DW2 did not act improperly in representing both parties in the Mortgage transaction, it would have been more prudent if DW2 had discharged himself from further acting for the Plaintiffs and for that matter for the Defendants as well once the Plaintiffs defaulted in payment of the first instalment due on 12 November 1981. Whilst by then a conflict of interest had not arisen between the parties, there was the possibility that it may arise. The Plaintiffs' directors would then have no cause to complain that when DW2 wrote his letter of 7 December 1981 (PB-62) to the Plaintiffs on the Defendants' behalf, he was still their solicitor and had no right to write to them in the other capacity. DW2 should not have waited until the Plaintiffs had consulted another solicitor and had instituted this Suit before deciding that he could not act for the Defendants either.

79 I now turn to the other allegations raised in the Statement of Claim and in particular the contention that the Mortgage is fraudulent and void because the sum stated therein should be $1,350,000 and not $5m; this claim has no merits. DW2 had testified that when he wrote DB-1 to the Defendants on 22 July 1981, he had only asked for a loan of $1.3m on behalf of PW1 and PW2 and yet six days later when he wrote PB-9 to the Defendants to confirm the terms for the loan, the Defendants' Mr. Shahid Murtaza (Shahid) had told him (in the

Version No 1: 11 Sep 2026 (01:05 hrs)

telephone conversation referred to therein) that the sum to be lent would be $1.35m secured on a mortgage for $5m. He could only surmise that Chen must have spoken to the Defendants in the interval between his two letters. Just as the Plaintiffs could not call Chen to give evidence, the Defendants were not able to call Shahid as their witness as he had left their services on 6 November 1983 (exh D3) and his present whereabouts are unknown (evidence of DW1). It serves no purpose therefore to speculate on the reasons why the Mortgage did not reflect the amount actually disbursed. The only light thrown on the matter is to be found in para 7 of Shahid's affidavit filed in the earlier injunction proceedings where he stated:-

80 The only reason why the < Defendants > and the Plaintiff agreed to create a mortgage of $5m was in contemplation that had the Plaintiff, being a new customer of the < Defendants > , shown itself to be reliable and creditworthy and paid the instalment on time, the < Defendants > would have considered both re-scheduling the loan and making further advances of up to $5m for the development of the said property once planning approval was obtained.

81 DW1 had in her evidence said she could only conjecture if the Plaintiffs had satisfactorily performed their obligations namely, paid both instalments, then the Defendants would have considered increasing the loan amount as the CCK land was a huge piece of land that had development potential. A mortgage for $5m would dispense with further documentation and with having to seek fresh approval from the Defendants' head office for any increase in the loan amount over and above $1,350,000.

82 Taking the classic defination of fraud as that propounded by the House of Lords in < Derry v Peek > (1889) 14 A.C. 337, the Plaintiffs must prove, in

Version No 1: 11 Sep 2026 (01:05 hrs)

order to establish fraud, the absence of an honest belief in the truth of that which has been stated; in the words of Lord Herschell "fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth or (iii) recklessly, careless whether it be true or false." I find that the Plaintiffs have not made out their case of fraud. The evidence of PW1 shows that he knew that the Mortgage was for $5m when the loan was only for $1,350,000. This is supported by the Plaintiffs' resolution (PB-10/11) passed on 4 August 1981 which was signed by the two directors PW1 and PW2 and further borne out by Form 34 (PB-56) filed with the Registry of Companies signed by PW2.

83 It is common ground that the Plaintiffs needed a loan to complete their purchase of the CCK land and that the same was intended to be resold at a profit almost immediately. Unfortunately as can sometimes happen to the best laid plans of mice and men, the proposed resale by Chen at $2m came to nought and the land which had been bought for a song became a liability rather than an asset. It is to be noted that until it was first raised in the letter of Joe Chellam, the Plaintiffs at no time complained about the Mortgage being for $5m against the actual sum disbursed, until the institution of this Suit. In this connection I do not accept the contention of Counsel for the Plaintiffs that the Mortgage is thereby fictitious and therefore invalid. She had argued that to the world at large it would appear that the Plaintiffs had borrowed $5m from the Defendants and that it is tantamount to mis-representation of the sum so advanced. The short answer to this contention is that any third party who is so interested, can easily ascertain the actual sum due and outstanding under the Mortgage, from the Defendants. It bears mentioning also that if the Defendants' facility had been an overdraft instead of a term loan, the actual loan disbursed may also not reflect the facility extended but would be less. Further, PW1 had agreed under cross-

Version No 1: 11 Sep 2026 (01:05 hrs)

examination that the Defendants in any event can only recover from the Plaintiffs the actual sum lent namely $1,350,000 excluding interest and other charges and not $5m. The cases cited by Counsel are, with respect, not in point.

84 The Plaintiffs had raised as an alternative plea that the Mortgage had been executed under a mutual mistake and is therefore void and inoperative and ought to be set aside. I agree with the submission of Counsel for the Defendants that the doctrine of mutual mistake has no application to this case as the requirements thereof are not present, namely, that both parties are mistaken as to some fact which lies at the basis of the contract < Bell v Lever Brothers Ltd > (1932) A.C.161. Here both the Plaintiffs and the Defendants were fully aware that the amount disbursed would be $1,350,000 whilst the Mortgage would be for $5m.

85 The Plaintiffs are also not entitled to a declaration that the Mortgage should be rectified to reflect a figure of $1,350,000 instead of $5m.

86 As for the complaint concerning DW2's charging the Plaintiffs full mortgagees' scale of costs ($23,725) based on $5m, DW2 explained that his charge reflected the Mortgage sum in addition to which he had waived one set of charges namely mortgagors' costs. Further he said the Plaintiffs did not, until two years later, complain about his charges.

87 On the Serangoon and Fook Hai properties, DW2 explained that by their very nature of being collateral mortgages, they had to reflect the Mortgage sum of $5m and not the amount disbursed of $1,350,000. Both DW1 and DW2 maintained that the collateral mortgages were given in consideration of the Defendants defering the then intended auction of the CCK land scheduled for 4 March 1982 and not to defer the bank's rights under the collateral mortgages as

Version No 1: 11 Sep 2026 (01:05 hrs)

PW1 and PW2 had asserted. Counsel for the Plaintiffs argued that effect must be given to the plain meaning of collateral mortgages namely, that mortgagees resort to them only after they have first exercised and exhausted their rights against the principal security which in this case is the CCK land. She relied on DW2's letter to the Plaintiffs dated 7 October 1982 (PB-105) in support of her contention that the Defendants wrongfully auctioned off the Fook Hai property on 18 November 1982 when they had agreed to allow the Plaintiffs an extension of time until 31 December 1982 in which to pay the loan. DW1 and DW2 disagreed with her contention and relied on the Deed (PB-107) in particular on recital 4 therein which specifically stated that the Defendants had agreed to defer the exercise of their rights as mortgagees against the CCK land only which deferment was also subject to the Defendants receiving $500,000 by 31 March 1983 which never materialised. I may add that the Defendants' stand is supported by DW2's letter to the Plaintiffs dated 15 October 1982 (DB-87) which stated:-

88 Please note that our clients require the < Assignment > to be executed.... by 20 October 1982....failing which, their offer to defer the exercise of their rights as mortgagees in respect of the Chua Chu Kang property will lapse.

89 I am satisfied on the documentary evidence in particular the Deed that the Defendants were entitled to exercise their rights as mortgagees against the Fook Hai property.

90 I now turn to the Plaintiffs' complaint that the Defendants failed to render a proper account of the sale proceeds of the Fook Hai property. DW2 gave evidence that prior to the auction date there was no communication from either Goodrich or the Plaintiffs although on the auction date itself CHC received a telephone call to the effect that an injunction had been taken out to

Version No 1: 11 Sep 2026 (01:05 hrs)

stop the auction. Upon his checking, DW2 found the information to be untrue. He wrote to Goodrich the day after the auction to advise that the sale price was $145,000 which letter (DB-98) was carbon-copied to the Plaintiffs. He received no response from either Goodrich or the Plaintiffs to DB-98 or to his subsequent letters. He said despite his repeated requests, Goodrich failed to deliver the keys to the Fook Hai property with the result that he had to engage a locksmith to change the locks for completion. Thereafter on 15 January 1983 (DB-123) he rendered to the Defendants a statement of account of monies received and disbursed forwarding to the latter at the same time the balance sale proceeds of $44,937.29. DB-123 was carbon-copied to both Goodrich and the Plaintiffs. In turn based on DB-123 DW1 said the Plaintiffs prepared their own statement (DB-126) to show their receipt of $77,687.29 (the initial deposit of $32,750 plus final balance of $44,937.29) from the auction less all expenses incurred. The two sums were creditted to the Plaintiffs' loan account in November 1982 (DB-182) and in January 1983 (DB-181) respectively. DW1 testified that because the Plaintiffs had a loan and not an overdraft account with the Defendants, statements were sent to the former at half yearly and not monthly intervals. The Defendants sent half yearly statements to the Plaintiffs until some time in 1984 (DB-144/145) when the statements were returned to their accounts department by the postal authorities because the Plaintiffs were no longer at suite 406, Fook Hai Building; she was not advised by the Plaintiffs of any change of address. On this aspect, PW2 gave evidence that the landlord of suite 406 distrained for rent and he could not remember whether he had informed the Defendants of the Plaintiffs' change of address to 105, Greenfield Drive, Singapore 1545. Both PW2 and DW1 said that the Plaintiffs' auditors Robert Yam & Co had written to the Defendants in 1986 and 1988 (DB-147, DB-152, DB-164) to request for statements for all accounts maintained by the Plaintiffs for the years 1982 to 1985, which the Defendants supplied. The Defendants requested Robert Yam

Version No 1: 11 Sep 2026 (01:05 hrs)

(DB-165) for the Plaintiffs' address for purposes of forwarding statements but did not receive the same. There is therefore no merit in the complaints of PW1 and PW2 that they never received the Plaintiffs' statements.

91 DW1 testified, supported by the Defendants' statements (DB-181, DB-175, DB-180) that the balance compensation sum ($28,500) received for the acquisition of the Serangoon property was creditted to the Plaintiffs' account together with the (balance) compensation sum for the CCK land ($125,603.14) as well as the deposit forfeited from Martin Lee. I may add that the sale of the Fook Hai property at $145,000 was based on CHC's valuation of $125,000 and the Plaintiffs really have no cause to complain thereon.

92 I am also satisfied based on DW1's evidence that every item save one ($7,261.41) debitted to the Plaintiffs' account including the Defendants' legal fees was justified. The figure $7,261.41 was debitted on 13 January 1982 (DB-183). DW1 testified that the item represented legal charges and fees paid to auctioneers and was an accumulation of various charges, bills and disbursements but she was unable to furnish a breakdown as in the nine years' interval that had lapsed since the entry was made, the Defendants no longer had the relevant records. She pointed out that if the Plaintiffs were unhappy with the debit entry,the directors should have informed the Defendants when they received the Defendants' statement whereupon the Defendants would have produced documents to substantiate the item. As no objection was raised at the material time, the Defendants deemed the entry to be correct. I agree with DW1's contention that it is too late in the day for the Plaintiffs to complain about the items debitted to their account.

93 On the Defendants' complaint that DW2's letter of demand dated 17 June 1983 (PB-205) for repayment of the Mortgage sum failed to specify the exact

Version No 1: 11 Sep 2026 (01:05 hrs)

amounts due and outstanding, I note that the letter received no response from either the Plaintiffs or PW2 to whom the same was carbon-copied. If indeed the Plaintiffs in particular PW1, PW2 and Chen were really interested and the Plaintiffs were in a position to pay the outstanding sum due, they could easily have ascertained the amount from the Defendants. In any event the Plaintiffs well knew the sum due must be at least $1,350,000. Further, the evidence of DW1 that the Defendants sent half yearly statements on the loan account to the Plaintiffs until sometime in 1984 was never challenged. As with their complaint that the Defendants failed to account to them the compensation sums received for the Serangoon property and the CCK land, I find this complaint of the Plaintiffs frivolous and unfounded.

94 Although not pleaded in the Statement of Claim, PW2 complained about the Defendants' interest rate of 18% charged to the Plaintiffs on the loan which their counsel described as usurious. DW1 explained that in 1981 the Defendants' prime lending rate was 14.5% which added to the 3.5% over the former which the Plaintiffs had agreed to pay at the time they took the loan, rendered the interest payable 18% per annum. She explained that the Defendants charged the effective interest and not the nominal rate which appears to be lower but is actually much higher, for example a nominal interest rate of 8.25% actually means an effective interest rate of 18%. DW1 computed restrospectively the actual interest rates charged to the Plaintiffs' loan account (exh D2) and stated that had the Plaintiffs serviced the loan, interest would have been charged on a reducing balance method so that effectively the Plaintiffs paid an interest rate of 13.5% per annum. She concluded that save for 1981 when the rate was nearer 19% due to the increase in the then prevailing prime lending rate, the Defendants did not charge the Plaintiffs 18% interest as they were entitled to. DW2 confirmed DW1's evidence that the prime lending rates in 1981 were high. PW2

Version No 1: 11 Sep 2026 (01:05 hrs)

had acknowledged under cross-examination that he was aware that the interest rate was high but the Plaintiffs had no choice but to accept because they needed the loan to complete the purchase of the CCK land. I find therefore that the Plaintiffs' complaint on the 18% interest rate charged by the Defendants is unfounded.

95 I now turn to the Defendants' Counterclaim. DW1 gave evidence that as at 1 November 1991, the amount due and outstanding under the Mortgage was $3,841,758.27 (exh D4A) and not the sum claimed under para 29(a) of the Counterclaim which had been calculated up to 30 June 1987 only. Although the Defendants had under para 29(b) of the Counterclaim prayed for interest on their claim at 6.5% per annum above their prime lending rate, their Counsel at the trial informed the court that they were not pursuing the claim for such default interest as the figure had not been inserted into cl 4 in the Mortgage (PB-18).

96 On the evidence I find that the Plaintiffs have not proven their case and accordingly I dismiss the Plaintiffs' claim with costs. I find in favour of the Defendants on their Counterclaim. There will therefore be judgment for the Defendants on the Counterclaim in this Suit as well as on their claim in Suit No. 2046 of 1987 against the Plaintiffs and the two guarantors in the sum of $3,841,758.27 together with further interest thereon at the contractual rate from 2 November 1991 up to today's date. Thereafter interest shall be at the statutory rate of 8% per annum since the covenant to pay interest contained in cls 1 and 2 of the Mortgage is ancillary to the covenant to pay the principal sum and is therefore extinguished by and merged in the judgment. The Defendants are also entitled to be paid costs by the Plaintiffs on their Counterclaim and for the 1987 Suit to be taxed on a solicitor and client basis.

Version No 1: 11 Sep 2026 (01:05 hrs)

Lai Siu Chiu JC

Anamah Tan and N Navaretnam for the plaintiffs
Aloysius Leng for the defendants

Version No 1: 11 Sep 2026 (01:05 hrs)