IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 413

OS 14/1996

Between

Indian Overseas Bank

… Plaintiff

And

Notandas S/O Premchand
Jamnadas Udasi

… Defendant

GROUNDS OF DECISION

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Indian Overseas Bank v Notandas S/O Premchand Jamnadas Udasi

[1998] SGHC 413

OS 14/1996
Kan Ting Chiu J
30 December 1998

Judgment :

Cur Adv Vult

1. This is an application by the plaintiff bank for the defendant to deliver possession of property known as 6 Guillemard Lane, Singapore. The bank is the mortgagee of the property under a mortgage dated 17 December 1991 and the defendant is the mortgagor. The mortgage was to secure the borrowings of Premchand & Sons, a firm of which the defendant is a partner. The bank alleged that $2,171,563.61 was due and owing from the firm as at 5 January 1996.

2. The bank had granted banking facilities to the firm since 1969 (the defendant alluded to a relationship going back 40 years.) The defendant has been a partner of the firm since 1966 and has been in charge of its dealings with the bank together with his father and brother. The first facility letter adduced in evidence was dated 15 April 1983. One condition for the facilities was the deposit of the title deeds to the property with the bank. The firm subsequently met financial

difficulties and was unable to service its borrowings, and this led to the suspension of the facilities in 1985.

3. By 1987 the bank wanted a legal mortgage on the property. A legal mortgage could not be obtained at that time while the estate of the defendant's father was being attended to. The defendant gave an undertaking in July 1987 to execute a legal mortgage of the property in favour of the bank when he was able to do that.

4. After offering the security in the legal mortgage, the firm did not obtain fresh facilities from the bank. The defendant commenced legal proceedings against the bank to set aside the mortgage on the ground that it was created in consideration of the bank's promise to grant fresh facilities to the firm. This action was dismissed, and an appeal from the dismissal met a similar fate in the Court of Appeal.

5. In the present action, the defendant accepted the validity of the legal mortgage but resisted the bank's application on the ground that the firm was not indebted to the bank. He contended that the bank was wrong to charge compound interest on all the firm's outstandings when it was only entitled to compound interest under the legal mortgage because there was no agreement for the payment of compound interest before than.

6. There was no dispute that compound interest is payable under the legal mortgage because clause 4(j) thereof specified that

> The interest on any principal money for the time being secured by this Mortgage including capitalised interest shall at the end of each calendar month or at the end of such period as may be determined by the Bank be capitalised and added for all

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> purposes to the principal sum then owing and shall thenceforth bear interest ….

7. At the commencement of the hearing, counsel for the defendant stated that

> The only issue is whether there is money due and payable under the mortgage for which they are entitled to possession.
>
> The debt was $5m, the Defendant has paid $8m, he does not understand there is a debt still owing.

8. No computation was done of the firm's outstandings with simple interest charged up to the date of the mortgage and compound interest thereafter. The defendant's case proceeded on the premise that if the outstandings were computed on that basis, any outstandings would have been discharged by the payments the firm made to the bank.

9. Counsel for the defendant contended that the letter of offer only provided for simple interest. That is not sustainable because the letter only referred to the rate of interest, and was silent whether it was to be computed on a simple or compound basis.

10. It is useful to look at the circumstances in which the legal mortgage was created. The bank wanted a mortgage on the property from the time of the first available letter of offer, albeit an equitable mortgage by the deposit of title deeds rather than a legal mortgage. By 1987, it wanted a legal mortgage on the property, and this was obtained in 1991.

11. A change in the form of security does not imply a change of the terms and conditions governing the facilities. Counsel for the bank raised this with the defendant in this exchange

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> Q: Do you agree that the mortgage did not change the terms and conditions of your facilities and your overdue accounts with the bank?
>
> A: There were no changes.

12. Since the legal mortgage did not introduce any changes of the terms and conditions, the irresistible inference is that compound interest was already payable before the indenture of mortgage was executed.

13. Conversely, if the previous agreement was that only simple interest was chargeable, then the indenture of mortgage was wrong in providing for compound interest when there were no changes in the terms for the facilities. The defendant had not complained that clause 4(j) was wrong and had not taken any action to have it rectified. Instead, he affirms that compound interest is payable pursuant to the legal mortgage. From his conduct it can be inferred that compound interest was chargeable even before the creation of the legal mortgage.

14. In any event, specific reference was made to compound interest in a letter from the bank to the firm dated 18 February 1994. On 14 January 1994 the bank sold some promissory notes of the Central Bank of Nigeria that it was holding as security. In the letter the bank informed the firm that after the sale there was an outstanding balance of $1,726,061.13 including interest which was compounded monthly.

15. The defendant said that after receiving the letter there was a discussion with officers of the bank where it was pointed out that the compound interest had not been agreed to, and

> They mentioned that the bank has a right to charge interest as agreed, I requested them to submit my appeal to their head

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> office, that client has paid over $3m in interest and interest paid on our deposit was less than half of what they charged us. They told me they had every right under the mortgage to collect compound interest and we have no argument. If we don't pay, they will take possession of the house. ... I told them to recalculate the interest, to give me a discount on interest and let me pay.

16. After the discussion a letter dated 27 May 1994 was written under the letterhead of the firm to the bank, the full text of which reads

> This is with reference to and in continuation of the discussions you had with Mr.Nari Premchand last week with regard to our overdue interest T/R Bills of S$1,76,061.13.
>
> In this regard, we would like to put forth the following points:-
>
> 1) As mentioned in our earlier letter dated 25th Feb '94. We have totally made a payment of S$8,091,642.12 till date as against our total debt of S$5,039,053.71 on 31.12.1985. As you are well aware that we got into this debt trap due to the Nigerian Fiasco. We would like you to be more considerate in the amount of interest charged on us. We understand that we have been charged between 9% and 12% + 1% (i.e. prime plus 1%). This under the circumstances is very exorbitant especially considering the fact that we have got to service the debt from our existing sources only. 2) During our discussion, one of the managers was saying that if instances of "Waiver of Interest" by any Indian banks could be shown, IOB would also follow suit. We have one such instance and in fact, we have submitted the evidence to you for the Waiver of Interest by an Indian Bank.
>
> In the above circumstances, we request you to consider our case once again in depth and allow us a total waiver of S$1,726,061.13.
>
> But considering our 40 years of unhindered business relationship and also it would be unethical on our part to ask for 100% Waiver, we would like to settle for an agreement whereby the file could be closed by accepting from us 50% of your total claim.
>
> We hope the above option should be acceptable to both of us and we earnestly seek your assistance and co-operation for an early settlement in the above matter.

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17. The defendant conceded that there was no reference to compound interest in the letter. Another letter dated 10 June 1994 was sent to the bank's head office in India which repeated the request for a reduction of the claim, also without reference to the question of compound interest.

18. On 5 July 1994 the bank issued through its solicitors a letter of demand for $1,914,361.05 together with the bank's certificate dated 28 June 1994 that the sum was due and owing on that date and that interest was computed monthly.

19. The firm replied on 8 July 1994 stating *inter alia*

> We wish to state that in all our earlier letters to the IOB, we have only contended the quantum of our liability to the bank and nowhere we have disowned our total liability. Our main point of argument is the rate of interest charged by the bank which, we again stress, is exorbitant …

with no reference to compound interest.

20. The firm referred to compound interest for the first time in writing in its letter of 13 February 1995 to the bank, when it said

> We appeal to your good sense of fairness as well as for the purpose of our long-term mutual benefit to review the outstanding matters and to kindly accede to our request for a waiver of 75% of the interest presently sought by you. You will, of course, be aware that we have already paid a total sum of S$8,091,642.02 in respect of the aforesaid overdue trust receipt bills. Our principle liability in connection with the trust bill only amounted to S$5,039,053.71. The interest you have already earned in respect of the aforesaid bills amount to well over S$3,000,000.00. The interest which has been charged against us is, with respect, excessive and non-competitive in comparison to the rates levied by other banks. We have maintained our accounts with your goodselves for well over 40 years and in all that time, have never once defaulted on any of our liabilities or responsibilities.

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> In the circumstances, we find it extremely difficult to understand why your bank is now insisting on the payment of interest amounting to S$1,298,915.57. We would be deeply grateful if you could forward to us a detailed computation on how this sum was arrived at. In particular, we will be grateful for your guidance on your right to charge compound interest in connection with the facilities granted to us.

21. It is noteworthy that even at this time, there was no denial that compound interest was chargeable, only a request for the basis for charging that. This was raised in February 1995, a year after the bank's assertion of the right to charge that in the discussion following the notification of the sale of the promissory notes in February 1994.

22. The letters must also be considered against the defendant's claim that after the receipt of the letter of 18 February 1994 from the bank objection was taken over the compound interest charged and the firm's position was that there was money due from the bank.

23. They do not bear out the defendant's evidence. There was no protest over the compound interest charged. There was no assertion of overpayment, or demand for the refund of the excess payment. Instead, there were requests for reductions of the bank's claim. When compound interest was mentioned one year after the bank had asserted its right to charge compound interest there was no complain that the bank was only entitled to simple interest prior to the legal mortgage, only a request for "guidance on your right to charge compound interest."

24. On a review of all the evidence, I find that there is no merit in the defendant's claim that the bank was only entitled to charge simple interest on the firm's outstandings up to the creation of the mortgage.

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25. Counsel for the bank submitted that since the bank's certificate issued with the letter of demand is conclusive on the sum due, it is implied that it is also conclusive on the method by which the sum is calculated.

26. Counsel was relying on clause 4(cc) of the mortgage that

> A certificate signed by an officer of the Bank as to the money or liability for the time being due or owing or incurred to the Bank from the Mortgagor the Borrowers or the Firm or from any other person liable to the Bank under this Mortgage and hereunder may be adduced by the Bank and shall in that case be accepted by the Mortgagor the Borrowers and the Firm as conclusive evidence that the balance or amount thereby appearing is due or owing to the Bank from the Mortgagor the Borrowers or the Firm or the person liable as aforesaid.

27. I am unable to agree with this submission. A conclusive-evidence provision does not render every certificate conclusive; the certificate must comply with the terms of the contract under which it is issued. In the present case, if it was agreed that compound interest is only chargeable with the legal mortgage and not before, a certificate computing compound interest on all the outstandings cannot be conclusive. When there is no express provision whether compound interest is charged on all outstandings or outstandings due after the legal mortgage, the certificate cannot be relied on to support the contention that compound interest is payable on all outstandings. That must be established through other means, and the conclusiveness of the certificate follows the determination of that issue.

28. In this case, the bank's certificates (the certificate of 28 June 1994 and a subsequent certificate dated 5 January 1996 for $2,171,563.61) are conclusive because the method of computation was correct, and not the other way around as submitted.

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29. The application is allowed with liberty to apply. The defendant is to pay costs to the bank to be taxed on the indemnity basis.

Kan Ting Chiu

Judge

Kan Ting Chiu J

N Sreenivasan (Derrick Ravi & Partners) with Charles Lin (Donaldson & Burkinshaw) for the plaintiff
Samuel Chacko (Manjit Samuel & Partners) for the defendant

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