IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 113

OS 1811/1998, RA 144/1999

Between

Hong Leong Finance Limited

… *Plaintiff*

And

Sarah Sim Yin Hua
Robert Matthews

… *Defendant*

GROUNDS OF DECISION

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

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Hong Leong Finance Limited v Sarah Sim Yin Hua and Another

[1999] SGHC 113

OS 1811/1998, RA 144/1999
Kan Ting Chiu J
30 April 1999

Judgment:

Cur Adv Vult

1. This is an appeal by Hong Leong Finance Limited, against the Deputy Registrar's dismissal of its application for an order that the respondent pay to it rent due from 3 September 1998 under a tenancy agreement between the respondent and the first defendant in respect of the property known as 40 Allamanda Grove, Singapore.

2. The appellant is the mortgagee of the property. The first defendant is the owner and mortgagor of the property. The respondent was in occupation of the property as tenant.

3. The first defendant was in arrears of $547,493.73 and interest under the mortgage as on 31 October 1998, and consented to judgment being entered against her by the appellant for the possession of the property, arrears due under

the mortgage, and costs when the appellant's action against her and the respondent came on for hearing.

4. The mortgage which was executed on 16 August 1996 incorporated the terms of a Memorandum of Mortgage filed in the Land Titles Registry by the appellant.

5. Clause 26 of the Memorandum provides that

> Without prejudice to any other rights powers and remedies of the Mortgagee, the Mortgagor irrevocably appoints the Mortgagee or any person nominated by the Mortgagee under the hand of a director or manager of the Mortgagee to be the attorney of the Mortgagor to demand receive sue for and take all legal proceedings to recover payment of any rent or other money payable by any tenant, lessee or occupier of the Mortgaged Property. The exercise of the aforesaid power by the Mortgagee or the attorney shall not be construed as the Mortgagee's giving consent to the tenancy, lease or occupation, or the Mortgagee's entering into possession of the Mortgaged Property.

6. The appellant had demanded rent from the respondent before it commenced this action. Its solicitors wrote to inform him on 3 September 1998 that

> In accordance with the terms of the mortgage entered into between your landlord, Madam Sarah Sim Yin Hua, and our clients, you are hereby put on notice that you are required henceforth to forward the monthly rent to our clients' officer, Ms Pauline Lim, who has been nominated to receive the rent.
>
> Take notice that should you fail to forward the rent due for September 1998 to Ms Pauline Lim by 10th September 1998, legal action will be taken to evict you from the above premises.

7. When the respondent failed to comply with the request, the appellant made the application in reliance on its contractual and statutory rights.

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8. Under clause 26, it was empowered to collect rent due as the first defendant's attorney. The respondent was aware of this clause (his previous solicitors had referred to it in a letter to the appellant's solicitors).

9. Nevertheless, knowledge of the clause and the demand did not impose on the respondent an obligation to pay rent to the appellant's officer Ms Pauline Lim. Clause 26 empowered the appellant or any person nominated by its director or manager to be the first defendant's attorney to receive rent in respect of the property. The letter of 3 September did not state that Ms Lim was nominated by a director or manager of the appellant, or that she was to receive the rent as the first defendant's attorney. It was not an effective notice for the purpose of that clause. If the respondent complied with it, he may face a claim from the first defendant.

10. Counsel for the appellant argued that in addition to clause 26, it was entitled to receive rent from the respondent under the provisions of the Land Titles Act and the Conveyancing and Law of Property Act which apply to the mortgage.

11. He relied on s 75(1) of the LTA that

> *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. (Emphasis added)

and s 24(1)(c) of the CLPA that

> A mortgagee, where the mortgage is made by deed, shall have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further:
>
> …

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> (c) a power, *when the mortgage money has become due*, to appoint a receiver of the income of the mortgaged property, or of any part thereof. (Emphasis added)

12. The same pre-condition applies to the operation of both provisions – that money is due and owing under the mortgage. The mortgagee's statutory right to collect rent, profits, or income arises only when the mortgagor is in arrears.

13. The appellant as mortgagee must notify the respondent of the basis of its demand. In this light, the demand of 3 September failed again because the letter did not state that the first defendant was in arrears, or refer to the provisions which entitled it to receive rent from him.

14. The respondent had no duty to investigate the basis of the appellant's demand beyond what was stated in the letter. As he was not informed why he was obliged or empowered to pay rent to the appellant, he was entitled to continue paying rent to the first defendant as he did.

15. The appellant's application fails, and the appeal is dismissed.

Kan Ting Chiu

Judge

Kan Ting Chiu J

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Shanker Kumar (Foo & Quek) for the appellant/plaintiff
Mimi Oh Kim Heoh (Mimi Oh & Associates) for the respondent/second defendant

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