United Overseas Bank Ltd *v* Loh Boon Hua
[2015] SGHCR 9

Case Number : Originating Summons No 1193 of 2014
Decision Date : 14 April 2015
Tribunal/Court : High Court
Coram : Colin Seow AR
Counsel Name(s) : Mr Ng Yeow Khoon (KhattarWong LLP) for the plaintiff; Defendant in person.
Parties : United Overseas Bank Ltd — Loh Boon Hua

Credit and Security – Mortgage of Real Property – Mortgagee's Rights

Civil Procedure – Mortgage Actions

14 April 2015

Colin Seow AR:

Introduction

1 The law relating to mortgage actions under Order 83 of the Rules of Court (R 5, 2006 Rev Ed) ("ROC") is by and large clear and uncontroversial. What is less clear and less uncontroversial, however, are the proper remedies that the law may afford to a mortgagee where a mortgage of a registered real property was granted subject to a prior and continuing leasehold interest held by a stranger to the mortgage, and the mortgagor subsequently becomes a bankrupt and defaults in his loan obligations to the mortgagee whilst the lease was still afoot. Will such a mortgagee, aggrieved by the mortgagor's default and if desirous to enter into receipt of rent payments from the stranger until the determination of the lease before exercising its power of sale, be entitled to do so if rent – which under the terms of the lease was supposed to be due and payable on a monthly basis – had unbeknownst to the mortgagee been fully paid in advance to the mortgagor? This was the situation that was presented in this mortgage action.

Background matrix

2 By an instrument of mortgage ("the Mortgage") dated 24 February 2014, a mortgage over a property owned by Mr Loh Boon Hua ("the Mortgagor") known as No 361A Sembawang Road, Goodlink Park, Singapore 758378 ("the Property") was granted to United Overseas Bank Limited ("the Mortgagee") to secure the extension of a refinancing housing loan in respect of the Property and two term loans ("the loan facilities") from the Mortgagee.

3 In applying for the loan facilities, the Mortgagor brought to the Mortgagee's attention that the Property had been leased to one Mdm Ding Yilian ("the Tenant") pursuant to a tenancy agreement dated 1 August 2013. It was not disputed that the tenancy agreement provided, *inter alia*, that rent was payable by the Tenant to the Mortgagor on a monthly basis for the entire duration of the lease, which was stipulated to be from 1 August 2013 to 31 July 2015.

4 The Mortgagor subsequently became a bankrupt on 26 June 2014 on his own application to the High Court, thereby giving rise to an event of default under the terms of the loan facilities. Following

the non-satisfaction of a letter of demand dated 17 July 2014 issued by the Mortgagee's previous solicitors calling on the loan facilities, two further letters dated 12 August 2014 purporting to give notice pursuant to section 75(2) of the Land Titles Act (Cap 157, 2004 Rev Ed) to the Mortgagor and notice to quit addressed to "The Occupiers" were issued and delivered by post. By these said letters, the Mortgagee demanded the Mortgagor and "The Occupiers" to deliver possession of the Property upon the expiry of one month thereafter. Two further notices for possession of the Property dated 25 August 2014 and 1 December 2014 were subsequently issued and delivered to the Property by the Mortgagee's previous solicitors, this time addressed specifically to the Tenant. No response or acknowledgement of the letters issued against "The Occupiers" and the Tenant was received by the Mortgagee or the Mortgagee's previous solicitors.

5 On 18 December 2014, the Mortgagee commenced the present mortgage action, naming the Mortgagor as the defendant in the action. The order sought by the Mortgagee in the mortgage action was for, *inter alia*, delivery of vacant possession of the Property to the Mortgagee.

6 The mortgage action first came up for hearing before me on 14 January 2015, where an adjournment was granted on the request of the Mortgagor who indicated his intention to file an affidavit in response. In granting the adjournment, I directed the Mortgagee's then counsel, Ms Audrey Ho from Yeoh-Leong & Peh LLC, to conduct some legal research in the meantime to assist the court at the next hearing on, *inter alia*, the issue of whether an order for vacant possession was justified given that the lease between the Mortgagor and the Tenant was not going to expire until 31 July 2015.

7 Yeoh-Leong & Peh LLC subsequently discharged themselves from acting for the Mortgagee. At the second hearing on 9 February 2015, the Mortgagee, who had since appointed KhattarWong LLP as its new solicitors, was represented by Mr Ng Yeow Khoon. At the hearing, Mr Ng indicated to the court that his firm would like to make its own attempt at serving the court papers for the mortgage action on the Tenant at the Property. This was so as to give the Tenant a fair opportunity to consider whether to 'intervene' in the action by way of taking out an appropriate application in court before the hearing proceeded any further. As such, the hearing was adjourned.

8 At the third hearing on 12 March 2015, one Ms Meng Lan Yu Sophia ("Ms Sophia") turned up in chamber with a written letter of authority signed by the Tenant, explaining that she had been duly authorised by the Tenant, who was out of the country, to appear as the Tenant's representative for the purposes of the hearing. Through Ms Sophia, the court was informed, *inter alia*, that the Tenant was in receipt of "the letter from the bank" and that the Tenant was of the view that if she were to be made to vacate the Property prior to the expiry of the lease, she would require a refund of the balance of the rent which she had previously paid full in advance to the Mortgagor. Ms Sophia further added that the Tenant was unwilling to make any further payment in respect of the lease because, as far as Tenant was concerned, her rent obligation had been discharged with the advance payment made to the Mortgagor.

9 Mr Ng made the following submissions in response. First, there was no evidence supporting the Tenant's allegation that rent had in fact been fully paid in advance. Second, the Tenant's position on the refund of rent was in any event irrelevant to the mortgage action as any issue of refund was a matter solely between the Mortgagor and the Tenant. In this regard, Mr Ng drew attention to clause 2 of the tenancy agreement which provided that rent under the lease was to be paid on a monthly basis, [note: 1] and argued that it should not lie in the mouth of the Tenant to now raise an issue of rent refund after having taken the risk of making rent payment in advance to the Mortgagor. Third, if the Tenant wished to resist the mortgage action, the Tenant should first take out a formal application to be joined as a party to the action, which Mr Ng pointed out the Tenant had not done.

10 At this juncture, it is apposite to mention that at the third hearing on 12 March 2015, the Mortgagee's position with respect to its action had somewhat altered under the legal advice of Mr Ng. Whereas the Mortgagee under its previous solicitors' advice was adamant that it was not bound by the tenancy agreement between the Mortgagor and the Tenant, the Mortgagee had now taken a more nuanced approach towards the remedies that it was claiming to be entitled in this mortgage action. Explaining the Mortgagee's latest stand in respect of its mortgage action, Mr Ng informed the court that the Mortgagee was now willing to accept that the Mortgage was subject to the tenancy agreement, and to that extent the Mortgagee was prepared not to elect for the remedy of vacant possession from the outset, unless the Tenant refused or failed to continue making monthly rent payments to the Mortgagee for the remaining term of the lease.

11 The reason underlying this latest position taken by the Mortgagee, Mr Ng explained, was that the Mortgagee's security interest in the Property should strictly be subject to the exact terms set out in the tenancy agreement. Given that the terms of the tenancy agreement expressly provided for rent to be paid by the Tenant *monthly*, Mr Ng submitted that the Mortgagee was perfectly entitled to rely on those exact terms to demand continued payment of monthly rent from the Tenant in the exercise of the remedies available to it as a mortgagee (*cf. Moss v Gallimore* (1779) Doug KB 279 ("*Moss v Gallimore*")); and that since the Tenant had made clear through Ms Sophia her refusal to make any further payment of rent under the lease (see [8] above), an order for 'immediate' delivery of vacant possession of the Property subject to a short stay of execution was the appropriate order to be made in the circumstances.

12 The third hearing on 12 March 2015 was eventually adjourned to provide the Tenant a final opportunity to (a) consider seeking legal advice after hearing Mr Ng's submissions, and (b) in any event to file, by no later than 23 March 2015, a formal application to join the Tenant to the mortgage action as a co-defendant (*cf. Mohamed Said bin Ali and others v Ka Wah Bank* [1989] 1 SLR(R) 689 at [10]), failing which the next hearing for the mortgage action shall proceed in the absence of the Tenant and her authorised representatives. The next hearing was fixed on 30 March 2015.

13 The Tenant and Ms Sophia did not attend the hearing on 30 March 2015. Neither was there any formal application taken out by or on behalf of the Tenant to join the Tenant as a co-defendant in the mortgage action by the stipulated deadline. It was in those circumstances that I ordered the hearing to proceed on the same day, upon which Mr Ng on behalf of the Mortgagee sought to press for an order for 'immediate' delivery of vacant possession (subject to a one month's stay of execution) on account of the Tenant's no-show and inactivity since the last hearing. After hearing further submissions by Mr Ng and the Mortgagor (who did not dispute the fact that he was unable to repay the arrears owing under the loan facilities), I granted, along with other consequential orders, the Mortgagee's application for delivery of vacant possession of the Property with the qualification that the Mortgagee shall only be entitled to enter into vacant possession starting from 1 August 2015, 12pm (*ie*, one day after the lease between the Mortgagor and the Tenant was supposed to expire). I now give the detailed grounds of my decision.

The analysis

14 The procedure governing mortgage actions is provided for in Order 83 of the ROC. O 83 r 1 of the ROC envisages that an action taken out by a mortgagee or mortgagor pursuant to Order 83 may include claims for any of the following reliefs:

(a) payment of moneys secured by a mortgage;

(b) sale of a mortgaged property;

(c) foreclosure;

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;

(e) redemption;

(f) reconveyance of the property or its release from the security; and

(g) delivery of possession by the mortgagee.

15 The full range of remedies available to a mortgagee in the event of a default by the mortgagor is however not confined to those enumerated in O 83 r 1 ROC. For example, section 24 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") provides for certain other remedial powers that are incident to the estate or interest of mortgagees:

Power incident to estate or interest of mortgagee

24.—(1) 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:

(a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby;

(b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(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]

16 In respect of property registered under the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA"), section 69(1) of the LTA expressly provides that the provisions of Part IV of the CLPA (of which section 24 of the CLPA is part) "shall apply, with the necessary modifications, to mortgages and charges registered under the provisions of [the LTA]" (see also Tang Hang Wu and Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (3ed, LexisNexis, 2009) at [18.171]).

17 In the present case, the Mortgagee's application for 'immediate' delivery of vacant possession of the Property (subject to a one month's stay of execution) (see [13] above) was fundamentally premised on a right it asserted it was entitled to exercise to terminate the lease between the Mortgagor and the Tenant, given the Tenant's refusal to make any further payment of rent in respect of the lease (see [8] above). This was, for all intents and purposes of the mortgage action, the linchpin of the Mortgagee's claim for 'immediate' vacant possession – the effect of which was to bring about an early termination of the tenancy agreement previously entered into between the Mortgagor and the Tenant.

18 It is trite that for any tenancy agreement validly entered into between a landlord and tenant, valid ground must exist to justify its early termination (see generally Kevin Gray and Susan Francis Gray, *Elements of Land Law* (5ed, Oxford University Press, 2009) at pp 403-425). What this meant for the present case was that the Mortgagee must first be able to establish a valid ground for early termination of the lease in question.

19 Mr Ng in his submissions brought to my attention the English case of *Moss v Gallimore* (see [11] above) where the *ratio* was reported in the following terms:

> A mortgagee, after giving notice of the mortgage to a tenant in possession of the mortgaged property under a lease prior to the mortgage, is entitled to the rent in arrear at the time of the notice as well as to what accrues afterwards, and may distrain for it after such notice.

20 Although being an eighteenth century case authority, *Moss v Gallimore* remained to be "still good law" in England (see *Kitchen's Trustee v Madders and Another* [1950] Ch 134 at 146). However, I considered the holding in *Moss v Gallimore* to be of no real assistance in validating specifically the Mortgagee's claim for further rent from the Tenant in the present case. In *Moss v Gallimore*, the dispute arose in circumstances where there was rent still remaining unpaid to the mortgagor at the time the mortgagee demanded payment from the tenant in possession. There was no question in that case relating to a mortgagee's entitlement to be paid a balance sum of rent which a tenant had previously advanced in full to the mortgagor.

21 In the absence of any authority brought to my attention that was directly on point, I found it appropriate, as a starting point towards addressing the ultimate question regarding the Mortgagee's entitlement to demand rent from the Tenant in the present case, to consider the position that receivers appointed by mortgagees under Part IV of the CLPA (which, as mentioned earlier in [16], is applicable to property registered under the LTA) occupy in the eyes of the law. To that end, some elucidation on the position occupied by a receiver so appointed vis-à-vis a tenant in possession of a mortgaged property was gleaned from section 29 of the CLPA which provides:

> **Appointment, powers, remuneration and duties of a receiver**
>
> **29.**—(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.
>
> (2) *The receiver shall be deemed to be the agent of the mortgagor*; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.
>
> (3) *The receiver may demand and recover all the income of the property of which he is*

appointed receiver, by action, distress or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and may give effectual receipts accordingly for the same.

[…]

(8) *The receiver shall apply all money received by him as follows:*

(a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;

(b) in keeping down all annual sums or other payments, and the interest on all the principal sums, having priority to the mortgage in right whereof he is receiver;

(c) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(d) in payment of the interest accruing due in respect of any principal money due under the mortgage,

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

[…]

[emphasis added]

22 In the light of the above provision, since a receiver would be deemed to be an agent of the mortgagor upon its appointment, it must follow that a receiver may not demand any further rent to be paid by a tenant in possession if rent had previously been collected in full by the receiver's principal (*ie*, the mortgagor). Additional support for this proposition, if one were to be needed, may be found in legal commentaries explaining the powers and duties of a court-appointed receiver whose position is comparable to that of a mortgagee-appointed receiver. In *Halsbury's Laws of England* vol 88 (5ed, LexisNexis, 2012) at para 77, for example, it was stated as follows:

77. Arrears of rent. A receiver of rents is entitled to all arrears unpaid at the date of the order for his appointment. Tenants who pay such arrears to their landlord before they have notice of the order will not be compelled to pay a second time to the receiver, but any party to the action who, with notice of the order, collects arrears of rent or takes securities for the amount due may be compelled to hand them over to the receiver.

23 The position of mortgagees exercising their right to enter into receipt of rent from a tenant may thus be compared accordingly. As Assistant Professor Wee Meng Seng has observed in one of his academic writings (see Wee Meng Seng, "Duties of a Mortgagee and a Receiver: Where Singapore Should and Should Not Follow English Law" [2008] 20 SAcLJ 559 at [7]):

7 The function of a receiver is to exercise the powers conferred on him, in particular the powers of sale and management, to bring about a situation in which the secured debt is unpaid. *His position is thus very similar to that of a mortgagee in the sense that the rights and powers*

conferred on the mortgagee were also meant for the purpose of repaying the secured debts. It is, therefore, logical that the duties owed by a receiver to the mortgagor, at any rate the common law duties developed by the judges, should bear a close resemblance to that owed by a mortgagee to the mortgagor. […] [emphasis added]

24 While I agreed with the general proposition laid down by Assistant Professor Wee that the positions of a receiver and a mortgagee are "very similar", I was of the view that a mortgagee who enters into receipt of rent does not, like a receiver, act in the capacity as agent of the mortgagor. Rather, I considered the correct view to be adopted in this specific regard was such a mortgagee would be acting in accordance with *its own right* towards realising an eventual outcome of appropriating the rent received from the tenant in satisfaction of the outstanding mortgage debt (see *eg Harlock v Ashberry* (1881) 18 Ch D 229 ("*Harlock v Ashberry (HC)*") and *Harlock v Ashberry* (1882) 19 Ch D 539 ("*Harlock v Ashberry (CA)*").

25 It was furthermore not entirely clear whether the treatment of money recovered by a receiver is, for the purposes of accounting between the mortgagor and the mortgagee, similar to that to be accorded to rent received by a mortgagee. No doubt in the former situation money received by a receiver shall be applied and appropriated in a certain statutory order of priority – as is evident from section 29(8) of the CLPA (see [21] above) (see also EH Burn and J Cartwright, *Cheshire and Burn's Modern Law of Real Property* (18ed, Oxford University Press, 2011) at p 853; WJM Ricquier, *Land Law* (3ed, LexisNexis, 2007) at p 246). Yet, it has also been said that "[a] direction [by incumbrancers such as mortgagees] to a receiver to keep down the interest on incumbrances out of rents received by him does not operate as an appropriation of such rents or of so much of them as may be required for payment of all interest" (see *Halsbury's Laws of England* vol 88 (5ed, LexisNexis, 2012) at para 107); although it is also to be noted that this last quoted statement, if interpreted literally, would appear to be inconsistent with the understanding evinced by other commentators suggesting that a receiver who collects money derived from a mortgaged property may instantly appropriate the money to satisfy the interest due under the mortgage loan (see *eg* Mark P Thompson, *Modern Land Law* (5ed, Oxford University Press, 2012) at p 523; Adrian J Bradbrook *et al*, *Australian Real Property Law* (2ed, LBC Information Series, 1997) at [14.37]). On this, my considered view was that section 29(8)(d) of the CLPA (see [21] above), which provides that a receiver shall, *inter alia*, apply money received "in payment of the interest accruing due in respect of any principal money due under the mortgage", would appear to support the position taken by these other commentators as the better understanding to be had.

26 I now turn to the treatment of rent received by a mortgagee upon giving notice on the default of a mortgagor. In *Harlock v Ashberry (HC)* at 235 (see [24] above), Fry J in interpreting an English state of limitation under contention between the parties thereto took the following view in respect of the treatment to be accorded to such receipts of rent:

> […] What is the effect of a mortgage of land as regards the right of the mortgagee to receive, and (as between the mortgagee and the mortgagor) the liability of the tenant to pay the rent to the mortgagee? In my judgment the mortgage carries with it the liability of the tenant to pay his rent to the mortgagee; the mortgagee may at any time he thinks fit require the tenant to pay his rent to him. *Therefore, if I am right in the proposition I have laid down, the tenant whose land is mortgaged is a person who, as between the mortgagor and the mortgagee, is liable to make a payment to the mortgagee in satisfaction of the mortgage debt*; and therefore his payment to the mortgagee will keep alive the mortgagee's right to foreclosure. […] [emphasis added]

27 Unfortunately for Fry J, his view was proven to be wrong on appeal to the Court of Appeal in *Harlock v Ashberry (CA)* (see [24] above), where Jessel MR in his leading judgment held (at 543):

> […] The only question is whether that payment [of rent to the mortgagee by the tenant] was a payment of any part of the principal or interest […]
>
> That payment was admittedly made as rent, it was required to be paid as rent; and was received as rent. The argument on the part of the Respondents, which succeeded before Mr Justice Fry, was this, that […] a payment of rent by a tenant to a mortgagee will have to be taken into account, and allowed for as between the mortgagee and his mortgagor, and that consequently it amounts to a payment of principal or interest […]
>
> […] *I do not think that this was a payment of principal or interest at all. It is quite true that at the end of the account to be taken between mortgagor and mortgagee it may be that this payment will go against principal or interest; but so long as the account remains open between them the mortgagee is entitled out of the receipts to deduct his expenses for repairs and other just allowances; and it is only the final entry on the whole account which shews on which side the balance lies. There is no appropriation of any one payment at any time to any particular item unless there has been an actual appropriation at the time by contract between the parties. It is impossible to say that any particular item upon one side corresponds with any particular item upon the other side of the account.*
>
> *It is only on the final result of the account as taken between mortgagor and mortgagee that there can be any appropriation of the rents to principal or interest.*
>
> [emphasis added]

28 Brett LJ and Holker LJ agreed in their concurring judgments. Brett LJ contributed his analysis as follows (at 547-548):

> [..] the question arises whether payment of rent by a tenant to a mortgagee who has exercised the right to demand the rent, is a payment of principal or interest […] I come to the conclusion that it is not, for three reasons: 1. It is, at the present stage, no payment at all as between the mortgagor and mortgagees – *it is only an item in an account which will have to be settled between the mortgagor and mortgagees – an item in an account which is to go to the credit of one party to that account, that account containing many items more on the same side besides principal and interest and costs – e.g., expenses, repairs &c. That cannot be called payment either of principal or interest at all*. 2. […] it is not, as made, a payment of principal or interest – it is a payment of rent – rent paid by the person making the payment, and rent received by the person receiving the payment. It seems to me that payment made as of rent and received as of rent cannot be said to be a payment of principal or interest. 3. But even if it could be held to be a payment of principal or interest, it is not a payment at all by the mortgagor or any agent of the mortgagor, or by any person bound to make payment of principal or interest on his behalf, and I think that a payment of principal or interest […] must be made by the mortgagor or his agent, or at least by a person bound or entitled to make a payment of principal or interest for the mortgagor […] [emphasis added]

29 Jessel MR's and Brett LJ's judicial opinions in *Harlock v Ashberry (CA)* were endorsed and applied by the Singapore Court of Appeal in *Tan Hin Choon and others v Ban Hin Lee Bank Ltd* [1971-1973] SLR(R) 511 at [25]-[27]. At [24], the Singapore Court of Appeal also cited another of Jessel MR's holding in *Cockburn v Edwards* (1881) 18 Ch D 449 at 457 for the same effect.

30 In sum, the conclusion which I considered ought to be drawn from the foregoing analysis was this: while recovery of rent by a mortgagee-appointed receiver in respect of a tenanted mortgaged

property may, as and when such recovery takes place, operate as a direct appropriation in satisfaction of the outstanding mortgage debt or any part thereof, the payment of rent by an occupying tenant to a mortgagee upon notice following a mortgagor's default is merely representative of a credit entry the cognizance of which is to be taken for the time being in a notional balance sheet – and which would eventually be appropriated (in all literal sense of the word) in full and final settlement of the entire account between the mortgagor and mortgagee when the latter's security over the outstanding mortgage debt is consummately exercised.

31 It would thus stand to reason for the further proposition to be made that given a mortgagee's receipt of rent will have a tangible albeit eventual impact on the final taking of accounts between the mortgagor and mortgagee, so too will non-receipt of rent be capable of bearing dispositive significance in the final netting of accounts between the mortgagor and mortgagee upon full discharge of the mortgagee's security – provided that no circumstance exists which justifies such non-receipt of rent to be deemed as an externality for which another party, such as for example the tenant of the mortgaged property, is liable to account independently and directly to the mortgagee. For completeness, I will add that non-payment of rent that is *factually in arrears*, as was the case in *Moss v Gallimore* (see [20] above), would constitute one such possible circumstance envisaged by the proviso just stated.

32 Based on the foregoing analysis, I was therefore convinced that a tenant should not be made to suffer the peril of paying rent twice over if rent had already been advanced in full to the mortgagor as landlord. This was regardless of whether such advancement of rent was made against a term in the tenancy agreement stipulating that rent shall be paid on a monthly basis, as long as rent for the entire term of the lease had effectively been paid up. In arriving at this conclusion, I had considered and failed to find any persuasive reasoning either in principle or in policy as to why a tenant who effectively have had his lease financed in full should at all be given to understand by a mortgagee of the property that he must continue to make further payment of rent in order to retain his lease and enjoy all the incidental benefits attached thereto.

33 With that, I now come to the application of the above analysis to the mortgage action before me. First and foremost, there was no reason in the present case for me to doubt that rent had in fact been fully paid in advance by the Tenant, given the Mortgagor's candid admission in the course of the proceedings that he had at some point in time indeed received full rent in advance from the Tenant. Neither was there was any room, given the affidavit evidence reviewed by this court, for any suspicion of collusive behaviour between the Tenant and Mortgagor to be entertained. Accordingly, and following the analysis in [18]-[32] above, I found the Mortgagee's demand to be paid rent by the Tenant to be lacking in merit. It necessarily followed that it was a non-starter for the Mortgagee to even begin to assert any right to an early termination of the lease and for it to enter into vacant possession of the Property forthwith on the basis that the Tenant was not going to make any further payment of rent upon demand.

34 In rejecting the Mortgagee's contention that it was entitled to demand rent from the Tenant, I was satisfied that my decision could be further fortified by the fact that the Mortgagee could nevertheless in theory still pursue its claim in respect of the rent receipts for the remaining duration of the lease, albeit such claim would – following my analysis in [26]-[32] above – most probably have to be levelled against and be accounted for by the Mortgagor who in the present case had effectually collected full rent in advance from the Tenant.

35 In this last regard, I noted that the Mortgagor had already been declared a bankrupt by the time the present mortgage action was commenced. However, since no question was raised in the present proceedings as to whether such claim in respect of the advance rent receipts would

constitute a secured claim in priority to the Mortgagor's unsecured creditors in bankruptcy, I shall refrain from making any further comment in that regard.

Conclusion

36 For all the reasons stated above, and given that the Mortgagee had indicated no other intent to realise its security in respect of the loan facilities other than by way of exercising its power of sale upon entering into vacant possession of the Property, I granted orders the effect of which could be summarised as follows:

(a) that the Mortgagee shall be entitled to enter into vacant possession of the Property starting from 1 August 2015, 12pm (*ie*, the day following the expiry of the Tenant's lease);

(b) that upon the Mortgagee's entry into possession of the Property, the Mortgagee shall be at liberty to remove and/or dispose of all items and chattels remaining in the Property; and

(c) that the outstanding principal under the loan facilities and all applicable interest thereon shall be satisfied by the Mortgagor using the available proceeds arising from the eventual sale of the Property.

37 Finally, in light of the fact that this was a fairly involved and contested mortgage action for which I had no doubt a substantial amount of work had been put in by Mr Ng on behalf of the Mortgagee, I awarded the Mortgagee costs fixed in the sum of $6,500 (all in) which was to be added to the amount described in [36(c)] above and to be satisfied out of the available proceeds from the sale of the Property.

[note: 1] Affidavit of Phay Yue Lin (filed on 18 December 2014), p 108.