The Bank of East Asia Ltd *v* Lerida Pte Ltd and another and another matter
[2017] SGHC 261

Case Number	: HC/Originating Summons 711 of 2016 (HC/RA 229 of 2017) and HC/Originating Summons 712 of 2016 (HC/RA 231 of 2017)
Decision Date	: 23 October 2017
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Raelene Pereira, Tan Shu Ying Cherie and Chan Min Hui (Rajah & Tann Singapore LLP) for the plaintiff/respondent; Pua Lee Siang (Kelvin Chia Partnership) for the first defendant/ appellant.
Parties	: The Bank of East Asia, Limited — Lerida Pte Ltd — Pang Yee Hong — Evansville Pte Ltd — Poh Ching Yee

Credit and security – Mortgage of real property – Mortgagee's rights – Entry into possession – Notice

23 October 2017

Choo Han Teck J:

1 There were two Registrar's appeals heard before me. I set out the facts of each separately.

Registrar's Appeal No 229 of 2017

2 The plaintiff ("the Bank") offered the first defendant ("Lerida") credit facilities secured by a legal mortgage on several properties. The second defendant also executed a personal guarantee in favour of the Bank. Lerida defaulted in the payment of instalments due. The Bank demanded the arrears by letters of demand issued on 2 September 2016 and 19 September 2016. Both the first and second defendants failed to make payment of the arrears. On 27 September 2016, the Bank issued a letter to Lerida to deliver to the Bank vacant possession of the mortgaged properties upon the expiry of one month from the date of service of the said letter.

3 On 20 March 2017, the Bank's lawyers, wrote to Lerida's solicitors with terms of settlement. On 27 March 2017, Lerida requested for a seven-day grace period to remedy any non-compliance with the terms of the settlement agreement. This was accepted by the Bank on 29 March 2017. According to the settlement agreement, Lerida had to make payment of $50,000 to the Bank on the last day of each month from 31 March 2017 until 31 May 2017 and a lump sum payment of $150,000 to the Bank by 15 April 2017. Should Lerida fail to comply with these obligations under this agreement, the Bank would be entitled to commence legal action, and, in which event, Lerida undertakes to voluntarily surrender vacant possession of the mortgaged properties. The agreement further records Lerida's agreement that it shall have no defence or counterclaim to the Bank's claim and that it will allow the Bank to obtain an order for possession of the mortgaged properties by consent. Lerida defaulted on its payment obligations on 15 April 2017 and again on 30 April 2017. On 12 May 2017, the Bank terminated the settlement agreement and demanded that Lerida surrender the mortgaged property within seven days.

Registrar's Appeal No 229 of 2017

4 The Bank offered the first defendant ("Evansville") credit facilities secured by a legal mortgage over units in a condominium ("the Butterworth units"). The second and third defendants also executed a joint and several guarantee in favour of the Bank on 5 November 2013. Like Lerida, Evansville defaulted in the payment of certain instalments. On 27 September 2016, the Bank issued a letter to Evansville to deliver to the Bank vacant possession of the mortgaged properties upon the expiry of one month from the date of service of the said letter.

5 Similarly, the bank proposed terms of settlement on 4 November 2016. On 11 November 2016, Evansville's solicitors informed the Bank that their client accepts the terms. Under the agreement, Evansville was obliged to make monthly payments by the 15th day of each month between 15 November 2016 and 8 June 2017. Like the settlement agreement in RA 229, Evansville agreed that the Bank could commence legal action for the balance outstanding should Evansville fail to comply with its obligations. It further states that Evansville undertake to voluntarily surrender vacant possession of the mortgaged properties should it default on the payments and that it will allow the Bank to obtain an order for possession of the mortgaged properties by consent.

6 After Evansville defaulted, the parties entered into a revised settlement agreement on 31 March 2017. Evansville continued to default even after the revised settlement agreement was entered into. The Bank terminated the revised settlement agreement and demanded that Evansville surrender the Butterworth units within seven days of 12 May 2017.

Hearing before the Assistant Registrar

7 After more than seven days having elapsed since 12 May 2017 and more than one month having expired from the respective notice to quit, the Bank applied to court for possession of the property under O 83 rr 1 and 2 of the Rules of Court (Cap 322, R 5). Before the Assistant Registrar, the first defendant in both Originating Summonses argued that by virtue of the settlement agreements between the bank and Lerida and Evansville respectively, the pre-existing obligations between the parties had been discharged. Consequently, the defendants submitted that the Bank is no longer entitled to recover vacant possession on the notice that was issued prior to the settlement. They further submitted that Lerida and Evansville were given to understand that it was an implied term of collateral warranty of the settlement agreements that the Bank has to give fresh notice again in order to satisfy the requirement under s 75 of the Land Titles Act (Cap 157, 2004 Rev Ed). The AR found that the defendants made nothing more than a bare allegation that there was a representation, implied term or collateral warranty that fresh notice would be served by the Bank. She held that the settlement agreement clearly provided otherwise.

The appeal

8 At the appeal hearing, counsel for the first defendants in both appeals, Ms Pua, canvassed a different argument. She submitted that the notice given on 27 September 2016 is spent. She submitted that by agreeing to allow Lerida and Evansville to continue possession of the mortgaged properties through the respective settlement agreements, the Bank can no longer insist on delivery of vacant possession upon the expiry of the notice. As such, if the Bank wished to enter into vacant possession of the mortgaged properties, it has to issue fresh notice to the defendants in order to fulfil the requirement under s 75 of the Land Titles Act.

9 In response, counsel for the Bank, Ms Pereira, argued that the terms of the settlement agreements do not render the 27 September 2017 notices spent. She submitted that the terms of the agreements clearly preserved the Bank's right to enter into possession of the mortgaged properties, are without prejudice and therefore did not affect the validity of the notices given. She reiterated

that the defendants were represented by their solicitors in the negotiation process and were aware of the immediate consequences, including vacant possession of the mortgaged properties, should Lerida and/or Evansville default on their payment obligations.

My decision

10 This is not a case where the one month notice required under s 75 of the Land Titles Act was not granted. It is also not a case where notice was granted and allowed to lapse without further action on the part of the creditor. This is a case where the creditor gave not just one month notice for the debtor to remedy its default but many more months than was required. The extension of time to pay the outstanding sum owed to the Bank by instalments, as set out in the settlement agreements, was clearly an indulgence offered by the Bank to the defendants. If the appeals were allowed, future debtors may be prejudiced; creditors would not be willing to grant extensions or more time to debtors if the effect were to make it more onerous for them to claim their remedy under the law.

11 In this case, the settlement agreements clearly preserved the Bank's right to recover vacant possession upon breach of the terms contained therein. The terms set out the defendants' obligation to voluntarily surrender vacant possession of the mortgaged properties should it default on the payments and allow the Bank to obtain an order for possession of the mortgaged properties by consent. With express terms like these, it cannot be said that the Bank agreed to discharge the pre-existing obligations owed by the defendants.

12 I dismissed both the appeals. After hearing the counsel's submission on costs, I fixed costs at $3000 for each appeal plus disbursements.

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