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Beckett Pte Ltd v Deutsche Bank AG and Another and Another Appeal [2009] SGCA 18

This case illustrates the duties owed by a mortgagee to a mortgagor in the sale of mortgaged property.

Facts

The plaintiff, Beckett, an investment holding company incorporated in Singapore, took action against the defendant, Deutsche Bank AG, a German bank. Beckett had guaranteed a loan made by the Bank to one of its subsidiary companies.

The loan was intended to be repaid in six months from the proceeds of a syndicated loan and a convertible bond, but subject to market circumstances and on a “best efforts” basis. In addition, Beckett pledged the shares of four Indonesian companies of which it is the ultimate parent company to secure the repayment of the loan made by the defendant bank.

Upon default of the repayment of the loan, the Bank took action to enforce the security by selling the pledged shares owned by the plaintiff to a third party (DSM).

Beckett’s claims against the Bank were based on the following grounds: first, that the Bank failed to exercise the power of sale for a proper purpose and in good faith. Secondly, that the Bank failed to take reasonable care to obtain a proper price for the Pledged Shares in selling them at a grossly undervalued price. Thirdly, that the Bank conspired with DSM to sell the Pledged Shares to DSM, as a front, at an undervalue.

The Bank counterclaimed against Beckett for payment of the unpaid balance of the loan for which it acted as guarantor after accounting for the proceeds from the sale of the Pledged Shares.

Decision

The court held that the Bank, in exercising its power of sale, did not take proper steps to sell the Pledged Shares at the best price, and was therefore in breach of such duty as pledgee. The shares of two of the companies had been sold at an undervalue because the Bank sold them at a price significantly lower than the purchase price of the shares without giving any explanation as to how it had arrived at such prices and why it considered them to be the best price it could have obtained.

However, the sale of the Pledged Shares by the Bank to DSM was not improper nor effected pursuant to a conspiracy between them because the Bank was legally entitled to enforce the guarantee against Beckett and the sale was motivated by genuine commercial motives aimed at the protection of its investment in the Pledged Shares. Beckett also failed to prove that DSM was not a bona fide purchaser of the Pledged Shares.

If the sale by a mortgagee of mortgaged property is completed and the mortgagor seeks to have it set aside on the ground of bad faith or impropriety, he can only

do so on terms that he pays the mortgage debt. Accordingly, Beckett cannot set aside the sale of the Pledged Shares but will be entitled to damages.

Therefore the Bank is entitled to its counterclaim because there is

conclusive evidence that it had suffered a loss.

Commentary

This case effectively highlights the duties owed by a mortgagee to a mortgagor in the sale of a mortgaged property. The general duties to take care to obtain a

proper price and to act in good faith in realizing a mortgagee security are obligations implied by a mortgagee-mortgagor relationship and can only be excluded by clear and express words.

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