

Tai Sea Nyong v Overseas Union Bank Ltd
[2002] SGHC 40

Case Number : Suit 513/2001/G
Decision Date : 28 February 2002
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Carolyn Tan (Tan & Au Partnership) for the plaintiff; Hri Kumar and Ajay Advani (Drew & Napier LLC) for the defendant
Parties : Tai Sea Nyong — Overseas Union Bank Ltd

Land – Sale of land – Sale by mortgagee in possession – Whether permissible to use forced sale valuation of mortgaged property as theoretical estimate of property's value under mortgagee sale – Distinction between sale by mortgagee and sale by owner – Whether sale price conclusive of property's true market value – Whether experts' valuations admissible in the absence of fault by mortgagee

Land – Sale of land – Sale by mortgagee in possession – Appropriate focus in assessing whether mortgagee in breach of duty – Whether reasonable steps taken by mortgagee to sell property – Whether fair to expect mortgagee to get price that meets experts' valuation

Land – Sale of land – Sale by mortgagee in possession – Duty of mortgagee when exercising power of sale – Realising true market value of property

Land – Sale of land – Sale by mortgagee in possession – Whether mortgagee under obligation to account for notional rent – Circumstances under which mortgagee liable to account for such rent

Land – Sale of land – Sale by mortgagee in possession – Duty of mortgagee when exercising power of sale – Efforts to sell property – Duty to maintain property – Duty to advertise sale adequately – Duty to choose appropriate method of sale – Duty to put potential buyers in competition with each other – Whether reasonable steps taken by defendants to get true market value of property

Judgment

GROUNDINGS OF DECISION

Introduction

1. This was an action by Tai Sea Nyong (Tai) against Overseas Union Bank Ltd (OUB/the bank) for damages suffered as a result of OUB's alleged breach of duty as a mortgagee in possession. Tai had mortgaged No. 20 Leedon Road (the Property) to OUB and the bank repossessed the Property when he defaulted on his loans. He alleged that OUB sold the Property without taking all reasonable steps to obtain its true market value. Tai also claimed that OUB had an obligation to rent out the Property prior to its sale and should account to him for such notional rent. At the conclusion of the ten (10) days trial, I dismissed Tai's claim as being totally devoid of merit; he has now appealed against my decision (in Civil Appeal No. 600147 of 2001).

Undisputed facts

2. OUB extended loan and credit facilities to Tai which were secured by the Property as well as his factory at No. 34 Kaki Bukit Place. In the middle of 1999, Tai's business (Hilamda Pte Ltd) suffered a cash flow problem and he defaulted on his loan. As a result, OUB took out an action (in Originating Summons No. 1009 of 1999) to repossess the Property. On 6 August 1999, OUB obtained an Order of

Court which inter alia, gave it possession of the Property within 14 days, judgment against Tai in the sum of \$15,442,564.76 and the power to sell the Property. However, Tai did not vacate the Property by 20 August 1999. Instead, he instructed his solicitors to write two letters to OUBs solicitors (and he also wrote to OUB directly) between 18 August and 31 August, seeking repeated extensions of time to remain on the Property, on the basis that he was carrying out negotiations to sell the Property. On 31 August 1999, OUB gave Tai an ultimatum to vacate the Property or face contempt proceedings. He did not comply; instead, he instructed his solicitors to seek another extension of time on 3 September 1999. On 13 September 1999, OUB commenced contempt proceedings against Tai and successfully obtained an Order of Court for vacant possession of the Property by 12 November 1999. Tai breached this Order, was fined (\$2,500) for contempt of court in Originating Summons No. 1009 of 1999 and finally delivered up vacant possession on 19 November 1999.

3. After taking possession, OUB took steps to sell the Property. In early December 1999, the bank engaged two estate agencies, Edmund Tie and Co. (Edmund Tie) and FPD Savills (Savills) to do valuations of the Property; the bank also engaged its associate Overseas Union Realty Services (OURS) to maintain the Property.

4. In mid-December 1999, OUB orally instructed Knight Frank Pte Ltd (Knight Frank) to market the Property; the company was formally appointed by the bank's letter dated 9 February 2000. As part of its marketing efforts, Knight Frank direct-mailed to clients on its database, fixed **FOR SALE** signboards at the Property and advertised the auctions scheduled for 6 January and 9 March, 2000, in the English and Chinese dailies. At the two (2) auctions, the reserve price (\$12.6m) of the Property set by OUB was not reached. Indeed, there were no bids and no one approached the auctioneers privately after the auction either. Knight Frank also advertised the Property for sale by private treaty, following the auctions. However, no offers were received, despite these efforts.

5. In mid-March 2000, the bank was told by Knight Frank the company had received an offer of \$10.9m for the Property. This was followed by an offer on 17 March 2000 made through Colliers Jardine (Singapore) Pte Ltd (Colliers) from Prospect Investment Pte Ltd. (Prospect) of \$11.5m. On 10 April 2000, OUBs solicitors wrote to Tais solicitors to inform Tai of these offers and invited him to better these offers in two weeks, failing which OUB would sell the Property. On 13 April 2000, OUB received a better offer of \$11.7m through Knight Frank. OUB informed Colliers of the same as which result Prospect increased its offer to \$11.7m. Tai did not revert to OUB within the two weeks deadline or at all. Consequently, on 16 May 2000, OUB granted Prospect an option to purchase the Property at \$11.7m which was exercised on 30 May 2000; the sale was completed on 22 August 2000.

The plaintiffs case

6. Tai brought up three (3) reasons to found his claim that OUB breached its duty as mortgagees in exercising the power of sale by not taking reasonable steps to obtain the true market value of the Property; these claims were denied by OUB. Tai alleged:-

- a. the Property was sold at an undervalue as it was below the open market valuation of the Property;
- b. the steps taken to sell the Property were inadequate because the marketing and conduct of the sale were shoddily done by OUB and Knight Frank;
- c. OUB failed to properly maintain the Property so that it could be sold at its true market value.

7. Tai relied on the testimonies of two (2) professional valuers namely, Seow It Sze @ Ibrahim Abdullah (Seow) and Tang Kok Kong (Tang), to establish the true market value of the Property. Seow (who described himself as an expert valuer) said he had worked in the real estate line since 1972

whilst Tang (from Henry Butcher Appraisal Group) has had 24 years' experience in valuation. Both witnesses testified that the Property was sold at an undervalue because the price achieved reflected the forced sale value and not the open market value, of the Property. They agreed that the definition of a "*forced sale*" by the International Valuation Standards Committee was correct; that definition states:

price which arises from disposition under extraordinary or atypical circumstances, usually reflecting an inadequate marketing period without reasonable publicity, and sometimes reflecting an unwilling seller condition, and/or disposal under compulsion or duress.

However, they testified that the forced sale value of the Property was irrelevant and OUB should have obtained the open market value for the Property since it had a reasonable time-frame in which to market and sell the Property properly, notwithstanding it was a mortgagee sale.

8. Seow (PW2) assessed the market value of the Property to be \$15.8m as at 16 May 2000. He said he had inspected the Property (from the outside only) and based his valuation on the property remaining in its existing state and without redevelopment potential. In his cross-examination (NE114-115) Seow said he had taken into account various negative features of the Property although he did not record them in his report (dated 3 September 2001) or mention them in his examination-in-chief. Seow testified that the valuations done by the bank's experts Nicolas Cheng (Cheng) and David Chia (Chia) were inaccurate. Cheng had valued the open market value of the Property at \$14m while Chias valuation was \$13m. However, no reasons were offered as to why their values were wrong. Seow did not think that the value accepted by the property tax department of the Inland Revenue Authority (IRAS) i.e. \$11.7m reflected the correct value of the Property. He said this was because IRAS used different criteria and was prompted by reasons different from valuers in assessing the market value of the Property.

9. Tangs valuation (dated 19 February 2001) of the market value of the Property was \$14.525m as of 16 May 2000. Like Seow, Tang (PW4) never saw the interior of the Property but relied on Tais description which not unexpectedly, painted the Property in glowing terms. It is noteworthy that by the dates of their valuations, the house on the Property had already been demolished. In his report, Tang stated that he relied on current prices paid for five (5) properties that were considered similar to the Property which prices he then adjusted to take into account negative aspects of the Property. Questioned by counsel for the bank (NE232), Tang agreed that Chengs valuation of \$14m was reasonable. He also agreed that the comparables which Cheng and Chia took into account were reasonable (save for No. 2 Dalvey Estate used by Chia which was a conservation bungalow). His only comment was that Cheng should have considered the re-development potential of the Property and if he had done so, the valuation would have been closer to his own. However, Tang rejected the value of \$11.7m accepted by IRAS as an indication of the market value of the Property.

10. With respect to the marketing of the Property, Tai relied on the testimony of Tan Wee Seng (Tan), a real estate agent who had 20 years of experience in marketing various types of properties in Singapore. Tan (PW3) criticised Knight Franks marketing efforts for the following reasons:

(a) Knight Frank did not place more prominent advertisements (10 cm x 3 columns) to highlight the re-development potential of the Property. These advertisements should be made exclusively for the Property and placed in major English and Chinese newspapers at least three (3) times a week;

(b) Knight Frank should have properly maintained the Property and conducted

more "open houses" during the weekends;

(c) Knight Frank should have placed prominent "For Sale" signs at the Property which should also emphasise its re-development potential.

11. In addition, although Tang and Seow were not experts on marketing, they testified that the reason the bank did not obtain the open market valuation and hence the true market value of the Property was due to OUB's failure to properly market the Property. According to Seow, it was unreasonable of OUB to accept the offer of \$11.7m after two failed auctions, even though interest on the principal debt owed by Tai was accruing at \$1.5m a year. He suggested that OUB should have looked at the marketing process and in the meantime, should not accept such a low offer. As for Tang, he testified that when Knight Frank failed to sell the Property in the two auctions, OUB should have continued its attempts to sell the Property at the market value instead of concluding the sale hastily at its forced sale value.

12. Knight Frank was also criticised for marketing the Property during the Christmas/school holidays periods when buying interest would be low. Tai further complained that he was given insufficient time (namely two weeks) to come up with a better offer before the Property was eventually sold to Prospect; as such, OUB failed to give him a realistic opportunity to market the Property himself.

13. Tai claimed that OUB had rejected the offers he had received in August/September 1999 ranging between \$12.3m to \$15.5m. His evidence was that he had informed OUB in writing of the identities of potential buyers of the Property. However, OUB failed to follow-up on any of the potential purchasers. He also relied on the evidence of Calvin King (King), a businessman who made an offer in February 1999 of US \$11m for his business, to be secured by his factory and the Property. This offer was revoked in September 1999 when Tai informed King (PW5) that the Property/the factory had been re-possessed. Tai relied on King's testimony to prove he had an offer equivalent to \$16m for the Property, which OUB did not pursue.

14. With respect to OUB's alleged failure to maintain the Property, Tai testified he had informed OUB by a letter dated 18 November 1999 that he would be terminating the electricity and utility supplies to the Property. In addition, he also forwarded the keys for the auto-gate to OUB's solicitors on the same date. According to Tai, OUB did not object and he proceeded to terminate those services on or about 3 December 1999. OUB's solicitors wrote to Tai on 8 March 2000 to complain that its agents could not enter the Property because OUB only had the auto-gate control which required electricity to work, which supply had been cut off. Tai thereby inferred that OUB did not have access to the Property from December 2000 till March 2000 for purposes of maintenance. In addition, he concluded that the lack of access meant that Knight Frank did not conduct "open houses" to market the Property. Tai relied on a letter dated 1 March 2000 from Alexander Pool Specialists (the company hired by OUB to carry out pool maintenance) to OUB. This letter informed OUB that the bank had locked the gate for 2 weeks, the swimming pool was very dirty and the water had turned green. Tai claimed that this showed that the pool had not been maintained.

15. Apart from claiming that OUB breached its duties when it sold the Property for \$11.7m, Tai also alleged that the Property was left vacant for ten (10) months from November 1999 to August 2000, when OUB should have rented it out.

The defendants case

16. OUB called Cheng and Chia to testify on the forced sale and open market values of the Property.

They said it was not possible to achieve the market value of the Property when it was sold in a mortgagees sale, even with proper marketing. Cheng is the executive director of DTZ Debenham Tie Leung (formerly Edmund Tie) and has been a property valuer for 15 years while Chia, the managing-director of Savills, has 20 years' similar experience.

17. Both Cheng and Chia took into account similar considerations in assessing the value of the Property. In their reports, they identified two common negative characteristics of the Property which affected its value:-

(a) the Property was located at the T-junction of Leedon Road and Ford Avenue, which meant that it had bad fengshui or geomancy;

(b) the Property was next to an 11-storey condominium development known as Jade Mansion and thus suffered from constant lack of privacy, an important consideration affecting the minds of buyers of such good class bungalows.

In addition, Cheng (DW6) considered the negative implications (for rebuilding because it required levelling) of the undulating terrain of the Property and the age (40 odd years) of the house, albeit it was extensively renovated in 1992. Neither took into account the re-development potential of the Property.

18. Like Tang, Cheng and Chia used the comparative sales method of valuation and looked at the sale price of comparable properties that were selected because they were large freehold lands and, were sold relatively shortly before the valuation of the Property. Two of the properties are also in the same vicinity as the Property. The comparable properties used by both witnesses are as follows:

No	Property	Area (sq. ft)	Tenure	Date of Sale	Price (\$million)	Rate (p.s.f)	Type
1	24 Leedon Road	22,329	Free-hold	May 1999	7.6	340	Old single storey bungalow undergoing redevelopment
2	5 Leedon Park	37,876	Free-hold	Sept. 1999	15.5	409	Part 1/part 2 storey bungalow
3	11 Queen Astrid Park	31,807	999 years	Nov 1999	12.5	393	A single storey bungalow in good condition

Chia (DW5) further used No. 9 Queen Astrid Park for comparison. This property is/was a single-storey bungalow with a land area of 27,716 sq ft, of 999 years' tenure, which was sold at \$9.5m in November 1999, at \$343 per sq ft. He said No. 24 Leedon Road which he used was a particularly good comparable because it was adjoining the Property and suffered from the same negative characteristic

(undulating land). Significantly, neither Seow nor Tang used No. 24 Leedon Road as a comparable. Indeed in Seow's case, no comparables were even stated in his valuation report.

19. After making the necessary adjustments to the comparables, Chia assessed the market value of the Property to be \$13m or \$349 per sq ft as at 4 December 1999. He testified that IRAS had taxed the Property at an annual value of \$314 per sq ft or \$11.7m showing that it accepted \$11.7m as a fair market price for the Property. This was persuasive evidence that supported his own assessment of the market value of the Property. As for Cheng, he assessed the market value of the Property to be \$14m or \$376 per sq ft as at 22 December 1999. He revealed that Vivian Kong of the bank had telephoned him on 6 April 2002 to ask for an update and he had told her the market value of the Property had not changed since December 1999, it remained at \$14m.

20. The two experts testified the forced sale value of the Property was relevant to their valuations. They accepted the same definition of "*forced sale*" found in the SISV Real Estate Glossary. "*Forced sale*" was defined as follows:

open market value, with a proviso that the vendor has imposed a time limit for completion of the sale which cannot be regarded as a reasonable period of time, taking into account the nature of the asset, its location and the state of the market.

They opined that the forced sale value is equally applicable when there is a sale under duress or atypical circumstances. They classified mortgagee sales under this category and treated such sales differently from owners sales. Hence, the forced sale value of the Property was relevant. Cheng and Chia applied a discount of 10% to the market value to arrive at a forced sale value of \$12.6m and \$11.7m respectively for the Property.

21. Both valuers also testified that it was unrealistic to expect to achieve the market value of the Property in mortgagee sales. This is because such properties are considered to have bad fengshui by Chinese generally and hence attract offers lower than their market value. Cheng gave evidence that offers will also be lower because the buyer will be in a stronger bargaining position vis--vis a mortgagee who is keen on disposing the property, particularly in a weak market. Chia testified that the price a property can fetch in a mortgagee sale is unpredictable but cited a research analysis report produced by SISV Services Pte. Ltd. This report stated that apartments and condominiums transacted through mortgagee sales tended to fetch prices about 18% less compared to similar properties sold through ordinary means and is evidence that mortgagee sale prices are normally lower than a property's open market value.

22. On Tai's allegation that the Property was not properly marketed and or the conduct of the sale was shoddily done, OUB relied on the testimonies of Sai Tok Guek @ Mary Sai (Sai) and Grace Ng Ling Beng (Ng). Sai (DW1) is a director of Knight Franks auctions department with 12 years' experience as an auctioneer. She was in charge of the marketing and the auction of the Property. Ng (DW2) is the head of the auctions department in Jones Lang Lasalle Property Consultants Pte. Ltd. ('Jones Lang'), with 13 years of experience as an auctioneer. Both witnesses had conducted auctions for all sectors of the property market for clients who included other banks.

23. Sai testified that she conducted both auctions of the Property. At the first auction, there were about 100 attendees while the second auction drew a response of about 150 people. She said this was the normal turnout for an auction. She asserted that Knight Frank took all reasonable steps to market the Property before the auctions; these included:-

a. distributing details of the Property to Knight Franks customers (500-600) by direct mailing; these included lawyers, bankers and developers and if any person wanted more information, she would follow-up by sending the inquirer further details;

b. placing 14 advertisements in toto in the English and Chinese dailies. The advertisements ran for two (2) weeks prior to each auction. She testified that the sizes and descriptions were well within the industry standard and produced copies of the advertisements she had placed for the Property and those placed by other auction houses as comparisons. Five (5) more advertisements were placed in the newspapers after the two auctions;

c. affixing "**Auction**" and "**For Sale**" signs at the Property;

d. showing (with her assistant) ten (10) prospective buyers around the Property.

24. To rebut Tais allegations that the Property ought to have been sold by tender, Sai pointed out that selling the Property by auction was appropriate for a mortgagee sale. Mortgagees would generally sell mortgaged properties by public auction first, because it is the most transparent method. If the auction was unsuccessful, they would usually repeat the auction and then resort to other methods of sale such as private treaty or tender. In her experience, very few mortgagees would sell by tender without first trying the auction method.

25. As for Ng, she testified that the steps taken by Knight Frank to market the Property were more than reasonable. The fact that Knight Frank auctioned the Property during or close to the school holidays was not conduct that could be criticised. This is because there is never a perfect time to carry out an auction and in any case, it is common practice for potential buyers to send representatives to auctions. Ng agreed with Sai that the number of attendees at each for the two (2) auctions was normal. In addition, although some advertisements were placed during the school holidays, Knight Frank placed advertisements throughout December 1999 up to April 2000; thus, the sale was sufficiently publicised. She agreed with Sai that an auction is the most transparent and prudent way of conducting the sale since the Property was not so large as to warrant a sale by tender.

26. Chia Kook Vee (CKV), a vice-president of OUB's Credit Management Department, was the bank's representative who had the overall supervision of the sale of the Property. He (DW3) testified that the plaintiff and his solicitors did write to OUB. However, he disputed Tais claim that Tai informed OUB of the numerous firm offers for the sale of the Property from August 1999 to November 1999. CKV pointed out that none of the letters referred to any agreement for the sale of the Property or any firm offers which led to the signing of an option to purchase together with the payment of option monies.

27. CKV testified that OUB took the usual steps taken to sell mortgaged properties in this sale; the bank had not been criticised when it took such steps in previous mortgagee sales. The bank had appointed Edmund Tie and Savills to carry out valuations and Knight Frank to market and sell the Property, in December 1999, less than a month after it obtained possession. After appointing Knight Frank, OUB left the marketing and sale of the Property to Knight Frank's discretion as they are professionals and would know what to do. The bank attempted to auction the Property because it was/is the usual practice of the bank to sell re-possessed properties by auction first.

28. CKV testified that Sai informed him in mid-March 2000 that she received an offer for the Property at \$10.9m. A few days later, he received another offer from a client of Colliers, at \$11.5m. He then

informed Colliers that OUB would accept its offer unless Tai procures a better one or OUB received a better offer while waiting for Tais response. Tai was duly informed of both offers and was given two (2) weeks from 10 April 2000 to come up with a better offer but did not. However, on 13 April 2000, Knight Frank managed to find a buyer who was willing to pay \$11.7m. CKV then reverted to Colliers who matched the price and Prospect thereby secured the option to purchase on 16 May 2000. He testified he was unwilling to ask Knight Franks client to increase their price for fear of starting a private bidding war and losing both offers eventually.

29. CKV also rebutted Tais allegation that OUB did not maintain the property because it did not have the keys to the Property and could not gain access to the Property when Tai cut off the power supply needed to operate the auto-gate. He said OUB had access to the Property at all material times (save for the first three (3) weeks of March 2000) and were thus able to maintain the Property; Tai cut off the electricity supply only in March 2000. Since Tai did not supply OUB with the manual control keys to the auto-gate but only the keys to the house, OUB had no access because it relied on the remote control to enter the Property. However, the loss of access was only temporary and once OUB regained entry, Alexander Pool Specialist took additional steps to clean the pool. He relied on the same letter dated 1 March 2000 from that company, as Tai did.

30. OUB's contention was supported by Sai's testimony. Knight Frank conducted ten (10) inspections with prospective buyers, which would not have been possible if there was no access. Sai also testified that the Property was properly maintained and she found it in a reasonably good condition when she inspected the Property with prospective buyers. In addition, she had not received any complaints otherwise.

31. To reinforce its case that OUB always had access to the Property other than for about three (3) weeks in March 2000, OUB called Ong Chai Huk (Ong) to testify. Ong's company (Ong Hai Chwee Enterprises Pte Ltd) was engaged to change the locks of the Property on 3 December 1999; he had also arranged for the auto-gate to be repaired on 21 February 2000. He had entered the Property in mid-February 2000 with a representative of OURS. It was only on 22 March 2000 that the bank's Vivian Kong told Ong (DW4) that the Property was inaccessible because there was no electricity to operate the auto-gate. Ong was instructed to obtain the keys to the auto-gate so that it could be opened manually. He said he climbed the auto-gate to retrieve the keys from the distribution power box of the Property; he then handed the keys to OUB.

32. As to Tais allegation that OUB should have rented out the Property, OUB argued that the obligation to rent only arises when there is a delay in the sale of mortgaged properties. OUB submitted there was no such delay since the Property was put on sale about six (6) weeks after repossession, an offer was received within two (2) months of the first auction and the sale was completed two (2) months after the offer was received. OUB relied on Seows testimony that the potential rent was only \$20,000 per month while Tai was incurring interest at \$125,000 per month on his loan, to show that it was reasonable for OUB to try to sell the Property instead of letting it out.

Realising the true market value of the Property

33. It was common ground that OUB had a duty to act in good faith and a duty to take reasonable care to obtain the true market value at the date on which it decides to sell the Property. This principle enunciated in *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] 2 AER 633 is well established and has been applied in numerous local decisions (see *Lee Nyet Khiong v Lee Nyet Yun Janet* [1997] 2 SLR 713 and more recently in *Sri Jaya (Sdn.) Bhd. v RHB Bank Bhd.* [2001] 1 SLR 486). However, the parties' dispute centred on the figure that represented the true market value of the

Property.

34. Tai claimed that the true market value of the Property could not be a price reflective of merely its forced sale value. He contended that the true market value must reflect the accurate and updated open market valuation of the Property. OUB on the other hand, argued that the Property's true market value was its sale price of \$11.7m since the same was achieved after a competent firm of estate agents had properly marketed the Property.

35. OUB relied on the fact that all the expert witnesses on valuation agreed that valuation was not an exact science and, that the best evidence of the market value of a property is the actual sales price it obtained after the property is properly marketed. Valuations put forward by the various expert valuers are merely theoretical estimates. OUB's case was that such evidence by experts should be admissible against OUB only if it was at fault and caused the sales price not to be reflective of the true market value of the Property. For these propositions, OUB relied on *The Bank of East Asia Ltd. v Tan Chin Mong Holdings* [2001] 2 SLR 193, 205. In that case, Selvam J said at para 41 (p 205):

..In any event, as a matter of principle, *where the mortgagees are not in breach of their duties in relation to their power of sale, their liability cannot be measured on the basis of valuers opinions.* Expert evidence on value should be admissible against the mortgagees only in cases where they are at fault as in *Cuckmere Brick Co. v Mutual Finance*

The judge added at para 42 (p 206):

.Given that, when a competent firm of estate agents and property valuers market a property and conclude a sale, the price obtained by them is *conclusive* of the correct market price.

36. Counsel for Tai tried to distinguish *The Bank of East Asia Ltd. v Tan Chin Mong Holdings*; she argued that the case involved a claim by a mortgagee against the guarantors of a mortgagor. The guarantors claimed that the mortgagee had breached its duty in the exercise of its power of sale over the mortgaged property. Hence, the case was distinguishable since the mortgagor there did not allege that the mortgagee bank breached its duty. Further, the mortgagee bank took adequate steps to sell the property. The bank had offered the mortgagor a reasonable opportunity to sell the property, appointed auctioneers to carry out three (3) auctions and took out sufficient advertisements. However, such steps were not taken in the present case and therefore the principles in *The Bank of East Asia* case were not applicable.

37. I did not accept counsel's arguments. In both cases, the issue was whether the mortgagee breached its duty when it exercised its power of sale. To determine this issue, the court in *The Bank of East Asia* held that the evidence of valuers is not admissible unless the property had not been properly marketed in the first place. In the absence of proof of fault on OUB's part, the sale price of \$11.7m would be/is conclusive of the true market value of the Property. The further point to be determined was whether OUB had taken proper steps to sell the Property.

38. Similarly, Tai could not validly complain that OUB was in breach of its duties merely because the Property was sold at a forced sale price, if OUB proved that it took reasonable steps to sell the Property. OUB's counsel cited *Citibank NA v Lee Hooi Lian & Anor* [1999] 4 SLR 469 as an example of a case where the court held that a mortgagee was not in breach when it sold the property at a price close to the forced sale valuation of the mortgaged property. Tai however relied on *OUB v Chua Kok Kay* [1993] 1 SLR 686 where the court found the bank liable for breach when it sold the property at a

forced sale price. From both decisions, it was clear that the court was not merely concerned about whether the price achieved was reflective of its forced sale or open market valuation; the decisions turned on whether the price obtained by the mortgagee was the best price reasonably obtainable at the material time. In *Citibank v Lee Hooi Lian*, the court found that the mortgagee had taken adequate steps by appointing Knight Frank to auction the property and when that was unsuccessful, selling it at a price closer to the forced sale value by private treaty, at the time when the property market was on a downward trend. However, in *OUB v Chua Kok Kay*, the court found that the bank acted unreasonably by selling the property at a forced sale value 17 months after it had taken possession the property could have been sold earlier when the mortgagee took possession without any detriment to the mortgagee. As such, the fact that OUB sold the Property at its forced sale value *per se* does not mean that it had breached its duties as mortgagees.

39. The focus on whether reasonable steps have been taken to sell the Property rather than the valuations of experts or whether the true market value of the Property ought to be its open market valuation is also justifiable on policy grounds. In assessing whether a mortgagee is in breach, it is necessary that the facts be looked at broadly. The mortgagee will not be adjudged to be in breach unless he is "plainly on the wrong side of the line" (*Cuckmere Brick Co. Ltd. v Mutual Finance Ltd.* [1971] 2 All ER 633 *per* Lord Salmon at p 646). Since it is impossible to determine precisely the value of a property sold in a mortgagee sale, it will be unfair to cast such a heavy burden on mortgagees to secure a price to meet such theoretical estimates. No mortgagee bank would be able to conduct mortgagee sales in confidence if such a burden is placed on them. In the interests of commerce, the mortgagees duty must simply be to secure the best price reasonably obtainable at the material time regardless of the theoretical valuations of the property in question.

40. As Tai placed heavy emphasis on his argument that OUB relied on valuations which were too low and outdated and that the forced sale valuation was inapplicable in this mortgagee sale, I shall now address this issue.

41. Tai relied on the testimonies of Seow and Tang to support his argument that it was unreasonable of OUB to rely on the low valuations the bank had obtained. Seow testified that the open market valuation of the Property should be \$15.8m. However, I found his evidence to be completely biased in favour of Tai. Seow was evasive and at times his testimony was misleading to say the least. The following extract from his cross-examination (N/E114-115) clearly showed that he failed to discharge his duty as an independent expert witness.

Q. At the very start of my cross-examination, I asked if you were aware of any negative features of a property, you agreed you would be obliged to draw the courts attention to it?

A. Yes.

Q. But you now say property has many negative features. Yet none appeared on your report?

A. Yes.

Q. So by your own admission you have failed to discharge your duty to this court?

A. Disagree.

Q. I cant understand your answer. You didnt highlight any negative features in your report?

A. Yes.

Q. But earlier you agree you should highlight any negative features to the court?

A. Yes I can tell it to you now.

Q. So you are saying that you will only draw courts attention to it if you are asked?

A. Yes.

Q. Do you honestly believe that that satisfies your obligation to this court as an expert you will only say when asked?

A. If I say yes or no it will give the wrong impression"

Seow failed to mention *any* negative aspects of the Property in his report although he claimed that he knew they existed. When asked in re-examination (N/E 134) why these negative features were omitted from his report, he gave the incredible answer that when he was working out the value of the Property, *ideas popped up but I may not have put them down*. Although he recognised that a mortgagee sale may reasonably fetch 15% less than the property's theoretical market value, Seow failed to state so in his report but merely stated that the forced sale valuation was inappropriate and, only the open market valuation was applicable in mortgagee sales.

42. I agreed with counsel for OUB, despite Seow's denial (N/E 127), that Seow's report was tailored to support Tai's case. I myself had chided Seow at one stage (N/E 145) for describing the land in his report (at p 6) as *'land slightly below the level of Leedon Road'* when he well-knew that the land was 'undulating' which description (I told him) has a different meaning from *'slightly below road level'*. Another instance of Seow's subjective views was his admission under cross-examination that the Property suffered from bad geomancy by being located at a T-junction, which negative feature was totally omitted from his report. In re-examination (N/E136) Seow attempted to justify his omission with a nonsensical explanation that in ancient China, Chinese did not like T-junctions as the cart may, in the darkness, bump into a house if it is at T-junction. Nowadays he said, the only problem is, lights from a car may shine onto the house at night and to mitigate such disadvantage, one can build a wall.

43. Yet another instance where Seow's evidence was misleading was his attempt to say that a comparable (No. 25 Ford Avenue) used by Tang (see exhibit **P2**) also suffered from the same disadvantage of being sited at a T-junction; I pointed out to him his statement was incorrect as that property was situated in a cul de sac (N/E 138), according to the latest street directory available. His feeble explanation was, he had visited the site and thought it was located at a T-junction. In the light of the instances highlighted above, I was of the view that Seow was not credible as an expert witness. Accordingly, I rejected his testimony.

44. I turn next to Tai's other expert witness Tang. He came across as nervous and sometimes answered question with some hesitation. Because of the controversy surrounding the extent of loss of privacy the Property suffered from Jade Mansion, I myself visited the site and informed Tang of my findings the following day (N/E 248). He then agreed with my observation that Jade Mansion (which is situated at No. 10 Leedon Road) overlooks the Property, even though a tennis court formed a buffer between the two (2) properties. Previously, Tang had argued (N/E 242-243) that the Property suffered less loss of privacy from Jade Mansion (which ground level he visited) than No. 12 Queen Astrid Park which he had used as a comparable (see **P1**). Although he had not visited the upper floors of Jade Mansion, Tang nonetheless maintained only the upper floors could look into the grounds of the Property. He opined that a pedestrian walkway behind No. 12 Queen Astrid Park was more obtrusive because anyone walking there (would-be robbers included) could intrude into the privacy of that house. It was only when counsel for the bank showed him photographs which Tai himself had taken

(see p 67 of Tai's affidavit of evidence-in-chief), that Tang agreed that not only the top but all, floors of Jade Mansion could look onto the Property. Tang had (at para 5.0 of his report) described the Property as being located near instead of at, the junction with Ford Avenue. Although he accepted (N/E206) that geomancy was a factor which the market takes into account, Tang said he himself did not believe in it because he is a Christian. Tang's explanation of his own personal beliefs did not detract from the fact that he was duty-bound to take into account geomancy which the market did, however irrational or illogical and even if it is not a recognised valuation principle.

45. I had also visited No. 24 Ford Avenue at the same time that I visited the Property. This property located at a cul de sac was also used by Tang as a comparable (see **P1**). Questioned by the court on whether he agreed that it had a better location than the Property, Tang (N/E 250) said it was more '*crowded*'; I did not accept his comment, pointing out that it cannot be right as the property (like the Property) was situated in a good class bungalow area, which means the land area must be at least 1,400 sq m or 15,000 sq ft.

46. I have referred to extracts of Tang's testimony to show that he was not an objective witness, although less blatantly biased in favour of Tai than Seow he was at least willing to make concessions when confronted with evidence which contradicted his testimony, unlike Seow. Consequently, I was wary of accepting Tang's testimony and valuation, without reservations. I was certainly not convinced that a house like No. 12 Queen Astrid Park could suffer the same lack of privacy from occasional passers-by on an adjacent walk-way as the Property did, from a towering and densely populated block of flats like Jade Mansion.

47. I preferred the testimonies of OUBs experts, Chia and Cheng, that the theoretical market value of the Property at the material time was \$13.5m and \$14m respectively. As it was not put to these witnesses that their valuations were unreasonable, according to the rule in *Brown v Dunn* (1894) 6 R 67, Tai was deemed not to have challenged their evidence. In any case, both witnesses withstood cross-examination admirably on how they arrived at their valuations. Indeed, I found Chia to be a remarkably candid witness who unhesitatingly informed the court that of the four (4) valuations put before the court, his valuation of \$13.5m was the *least wrong* (N/E 413-414).

48. Tai's own expert witness, Tang had valued the open market value of the Property at \$14.525m. However, even Tang agreed that Cheng's valuation was reasonable and Chia's valuation may also be reasonable subject to the qualification that he made the right assumptions. Tang also affirmed that the methodology used by Chia and Cheng was correct and that they had used reasonable comparables. He also agreed that Chia and Cheng were correct to apply 10% discount to the theoretical market value of the Property to obtain its forced sale value. Consequently, Tang's testimony did little to advance Tai's case that OUB relied on inaccurate valuations.

49. The crux of the dispute between Tang and OUBs experts centred on whether the forced sale valuation was relevant. Tang contended that it was not because OUB had ample time to market the Property. To him, the fundamental characteristic of a "forced sale" is one which had a short marketing period. Tang refused to recognise that mortgagee sales and owner sales are different in nature and contended that in both instances, with sufficient time to market a property, the sale price achieved should be its theoretical market value. On the other hand, Chia and Cheng testified that while the period available for marketing was a relevant consideration in determining whether a sale was a "forced sale", mortgagee sales are typically considered forced sale situations. This is because forced sales occur when there is a sale under atypical circumstances or distress and mortgagee sales fit that description.

50. Having given due consideration to the evidence of Tang, Chia and Cheng, I concluded that it was

not unreasonable for OUB to rely on the forced sale valuation as an estimate of what the Property may fetch. I accepted the testimonies of Chia and Cheng that while time is a pre-dominant factor in determining if a sale is a "forced sale", it is not the sole criterion. A mortgagee sale is different from a sale by an owner who has the luxury of taking as long as was needed to sell a property at a price acceptable to himself. A mortgagee is not obliged to wait indefinitely for the theoretical market value of the property to be obtainable before he can sell the property. He is not a trustee of the mortgagor when he exercises his power of sale. He can pursue his own benefit, i.e. to realise his security, in choosing the time of sale and his duty is merely to obtain the best reasonable price at the time he chooses to sell (*Good Property Land Development Pte. Ltd. v Societe Generale* [1989] 2 MLJ 17). In addition, I accepted the common testimony of Chia and Cheng that properties sold as mortgagee sales tend to fetch prices lower than their theoretical market value. These properties are associated with bad "fengshui" and in a mortgagee sale conducted in a weak market, buyers are in a stronger bargaining position. Hence, I could not agree with Tang that forced sale valuations are irrelevant and that OUB should have relied on open market valuations as the only indication of the true market value of a mortgaged property.

51. In conclusion, I found that there was no merit in Tai's argument that the valuations that OUB relied on were inaccurate. There was also no evidence that the valuations were outdated (by more than six [6] months). Therefore, the forced sale valuations which OUB relied on as an estimate of the price of the Property were reasonable, taking into account the definition of and that it was, a mortgagee sale.

Efforts to sell the Property

52. Tai complained that OUB breached its duty when exercising the power of sale over the Property because neither the bank nor its agents made reasonable efforts to sell the Property at its true market value; he contended:-

- (a) that OUB did not maintain the Property properly or conduct inspections of the Property with potential buyers;
- (b) the advertisements placed by Knight Frank were inadequate;
- (c) the Property should have been sold by tender or by private treaty with potential buyers identified by Tai instead of by auction;
- (d) OUB did not put the potential buyers in competition with one another.

53. As a preliminary point, Tai had argued that OUB should be liable for its own as well as its agents negligence in the conduct of the sale, even if it hired professionals to conduct the sale. His counsel cited *Tomlin v Luce* (1889) 43 Ch 191 which decided that mortgagees are not absolved from their duties and liability for negligence merely because they have hired competent professionals to carry out the sale. OUB on the other hand relied on *Sri Jaya v RHB Bank*. In that case, the court found that RHB Bank failed to take reasonable precautions to obtain the true market value because it did not publicise the sale sufficiently. Justice Rajendran held at para 51 (at p 500):

In this case, all that RHB Bank had done to publicise the property was to ask RHB Banks branches to spread the word around that the property was for sale. While I accepted Ong's explanation that he did not want to advertise the property as that might alert the occupants, there were other ways Ong could have

publicised the property for sale. He could for instance, have entrusted the sale to firms such as Richard Ellis, Knight Frank and Jones Lang and with their experience and knowledge of likely buyers of such a property, those firms could have undertaken the task without public advertising..

OUB contended that the case stood for the proposition that it would be sufficient for a mortgagee bank to engage professionals to conclude a mortgagee sale. In my view, *Sri Jaya v RHB Bank* merely commented that reputable firms such as Knight Frank could be entrusted with mortgagee sales because of their experience and knowledge. However, the case did not go so far as to hold that entrusting such firms with the sale was sufficient to absolve a mortgagee of his duties. The principle in *Tomlin v Luce* is still applicable and OUB would be liable for any negligence on the part of its agents even if it had hired a competent firm of auctioneers.

54. Now for Tai's complaint that the Property was not properly maintained; he had testified he had expended as much as \$6,000 per month on maintenance when he occupied the Property. This issue was purely factual namely, whether OUB and its agents did have access to the Property for purposes of its upkeep. Tai did not have access to the Property and did not produce any evidence on the state of the Property after he delivered-up vacant possession on 19 November 1999. His case was based solely on the assumption that OUB could not have had access to the Property since it took possession.

55. Tai said he had terminated the power supply sometime in December 1999 and OUB only wrote to him in March 2000 to complain that its agents could not enter the Property because there was no power to operate the auto-gate. From this, he inferred that OUB could not have entered the Property from December 1999 up to March 2000 when the problem was rectified. However, he provided no evidence that the lack of electricity prevented access .

56. On the other hand, OUB could prove that Knight Frank had entered the Property on various dates from December to February. Sai produced a photograph she had taken of the half opened auto-gate on 30 December 1999. She also testified that she and her assistant conducted inspections of the Property throughout the relevant period. Her evidence was not challenged under cross-examination.

57. In addition, Ong had testified that he entered the Property in mid-February 2000 which evidence was similarly unchallenged. Ong arranged for the gate to be repaired in late February 2000 and reported it to be in "good working condition". He had handed the keys for opening the auto-gate manually, to the bank in March 2000. Further, Alexander Pool Specialist invoiced OUB monthly from December 1999 to February 2000 for maintaining the pool. In its letter to OUB dated 1 March 2000, the firm mentioned that it did not maintain the pool when there was no access in mid-February. However, the letter also mentioned that the company took extra steps thereafter to clean the pool when access was finally restored.

58. After assessing all the evidence, I had concluded that OUB did have access to the Property for the greater part of the period from November 1999 to May 2000. It did not have access for some three (3) weeks in March 2000. However, the temporary loss of access did not materially affect the maintenance of the Property. Maintenance works were carried out for the larger part of the material period. I had no reason to disbelieve Sai's testimony that Knight Frank did have access to the Property from December 1999 until it discovered the problem with the auto-gate on 3 March 2000. I also accepted her evidence that the Property was in a presentable condition.

59. Tais second complaint was that the sale of the Property was not adequately advertised. He exhibited several advertisements for sale of good class bungalows that were larger than those placed

by Knight Frank. His witness, Tan, testified that the advertisements which Knight Frank placed were too small, appeared too infrequently and lacked detailed descriptions to attract the attention of potential buyers of good class bungalows.

60. Tans testimony was weak; indeed his qualifications as an expert witness were called into question. There was no evidence as to his qualifications in the field of marketing. Although he has been a real estate agent for 20 years, he admitted in cross-examination that he did not have any experience with the marketing of properties to be sold by auction or in advising banks on mortgagee sales. Indeed, he prepared his affidavit in a rush for the purposes of highlighting what OUB did wrong. He failed to clarify the facts surrounding the marketing efforts of Knight Frank and was content to rely on a letter written by OUBs solicitors dated 21 March 2001 as the sole basis for what he thought were the facts. He did not produce examples of his own advertisements for the purposes of comparison giving the excuse that they were irrelevant because he was not marketing the Property. During cross-examination (NE 153 and 168), he even admitted that he failed to take into account relevant facts given to him because he was careless in the preparation of his affidavit.

Q. You said you didnt know about Knight Franks direct mailing until after you affirmed your affidavit?

A. Yes.

Q. Thats why you didnt refer to it in your EIC?

A. Yes.

Q. That is incorrect? See 1AB334 Drew & Napiers letter which you said you relied on. See last sentence in para 2. You were told here?

A. Yes my mistake, my apologies.

Q. You said 1AB334 was all you had and yet you missed out a material portion?

A. My mistake.

Q. So you were careless in preparing your EIC?

A. Yes.

In the circumstances, I was of the view it was unsafe to rely on Tans testimony and I did not.

61. Ng on the other hand was a reliable witness. OUB had conceded that the advertisements placed by Knight Frank were less prominent than those Tai had exhibited. However, both Sai and Ng testified that the advertisements placed by Knight Frank were in line with the industry norm for sale by auction of mortgaged good class bungalows, in terms of size and description. The advertisements Tai exhibited were generally used in tenders or for owners sales. Such testimony was not challenged during cross-examination. Further it was Sais testimony that advertisements for tender sales are typically larger than those used for auction sales and that advertisements for owner sales could be larger because the size depended on the owners preferences.

62. Further, Sai and Ng testified that the frequency of the advertisements was also within industry standards. Tai complained that some of the advertisements were placed during school holidays when buying interest was low. However, I found that this was not a valid complaint. Ng and Sai gave evidence that advertisements are usually placed several weeks before an auction and their evidence in this respect was also unchallenged. It is also trite law that a mortgagee may choose the timing of the auction (*Lee Nyet Khiong v Lee Nyet Yun Janet*). OUB and Knight Frank were entitled to hold the auctions in January and March 2000. Consequently, Knight Frank was equally entitled to place

advertisements in December 1999 and March 2000, several weeks before the auctions. In any case I accepted that Knight Franks advertisements were within the industry norms in terms of size and description, and sufficient to publicise the auctions/sale of the Property.

63. At this juncture, I wish to refer to the appellate court's decision in *Lee Nyet Khiong v Lee Nyet Yun Janet*. Tai relied on this case to argue that the advertisements that Knight Frank placed were inadequate and that OUB should therefore be held to be in breach. There, the court found the mortgagee liable because he placed only one (1) advertisement for a sale by tender, two (2) weeks before the close of the tender. In addition, the advertisement did not contain any particulars of the property and stated merely its land area, location and tenure. Clearly, that case is distinguishable from ours. The advertisement in *Lee Nyet Khions* case was also for a tender, not an auction sale. According to Sai and Ng, advertisements for tender sales are typically more prominent as compared to those for auctions.

64. Lastly, Tai did not provide any evidence as to how the bank's or Knight Franks "poor" marketing efforts affected the sale of the Property. On the other hand, Sai had testified which I accepted, that she received many inquiries about the Property and the attendance at both auctions were in the normal range. Further, the eventual purchaser of the Property was not even a client of Knight Frank but had heard of the sale from other sources. In the light of these findings, I was of the view that the marketing of the Property was properly done.

65. Tais third contention was that OUB breached its duties by adopting an inappropriate method of sale, i.e. conducting two (2) auctions and selling the property by private treaty when the auctions failed. He contended that the Property should have been sold by tender. However, both experts, Sai and Ng, testified that most mortgagees would try to sale a mortgaged property by auction first. They would resort to other methods such as tender or private treaty sales only after auctions were unsuccessful, the reason being that an auction is the most open and cost-effective method of conducting a sale for properties of the size of the subject property. Counsel for Tai did not seriously challenge their testimonies. None of Tais witnesses testified that OUBs attempts to sell by auction, instead of by tender was "plainly on the wrong side of the line". In the circumstances, this allegation was without merit.

66. In the alternative, Tai argued that OUB ought to have pursued the potential buyers he had advised them through his solicitors letter dated 15 September 1999 (see 1AB100-102). He relied on the Court of Appeals decision in *How Seen Ghee v DBS [1994] 1 SLR 526* for the proposition, that an auction is not always the best way of securing a good price and, that a mortgagee should in general allow a mortgagor a reasonable opportunity to market his property by a private treaty sale. He contended that OUB breached this duty because it did not offer him a reasonable opportunity to market his Property or pursue offers by potential buyers he had identified.

67. However, Tais case was not borne out by the evidence. OUBs vice-president CKV, admitted that he did receive the letter dated 15 September 1999 from Tai's solicitors giving a status quo on persons who offered to buy the Property, their offers and the reasons for the failure of the negotiations in each case. He pointed out that he never received any information about Tai reaching any agreement with any of the purported purchasers. Moreover, none of the offerors actually paid any option monies and no lawyers were ever instructed on the conveyancing of the Property. The only witness who testified that he made some offer in relation to the Property was King. However, his testimony did not help Tai in any way since it was revealed during his cross-examination that his offer of US \$11m was not for the Property but for Tais business and the Property was only to be used as collateral for the deal.

68. In any case, Tai had ample opportunities to market the Property himself. Under a judgment obtained by OUB on 6 August 1999 (in the Originating Summons), he was supposed to deliver the Property up on 20 August 1999 but he failed to do so. He finally relinquished possession only on 19 November 1999 after disobeying three separate Orders of Court. He had an extended grace period in which to find buyers for the Property and show it in its best light but none materialised. OUB had also made it clear by its solicitor's letter dated 31 August 1999 that Tai was at liberty to ask any interested parties to liaise directly with OUB. However, according to CKV, no one approached OUB with any offer. Tai claimed that he did not refer interested parties to OUB out of pride and because of a fear of committal proceedings. Even if those reasons were true which I doubted, OUB cannot be faulted for not offering Tai an opportunity to refer buyers to it or unreasonably rejecting offers presented by Tai; he had admitted that he had not referred any interested purchaser to the bank.

69. Finally, Tai alleged that OUB ought to have placed potential buyers of the Property, i.e. the clients of Colliers and Knight Frank, in competition with each other. His counsel relied on *Sri Jaya v RHB Bank* and *Lee Nyet Khiong v Lee Nyet Yun Janet* for the proposition that a mortgagee must put potential buyers in competition with each other to get the true market value of a property. Those cases are distinguishable from the present case and are inapplicable. In both cases, the courts found the mortgagee liable because he accepted a lower offer although there was a higher offer available. In both cases, no reasons were offered as to why potential buyers were not put in competition with each other to secure the best value for the property and the courts held that the mortgagee ought to have allowed such competition amongst potential buyers. Here, the offer by Colliers client of \$11.7m which OUB accepted was the highest available offer at that time. More importantly, OUB had a good reason not to put Colliers and Knight Franks clients in competition. CKV was afraid that starting a private bidding war amongst the two (2) buyers would result in both parties withdrawing their bids. Ng and Sai had agreed that there was a serious risk that OUB would have lost both buyers if it had initiated a private bidding war. OUB was not "plainly on the wrong side of the line" when it refused to ask Knight Franks client to increase his bid.

70. In conclusion, none of Tais complaints as to the marketing of the Property or the conduct of the sale were valid. OUB took all reasonable steps to obtain the true market value when it sold the Property.

Obligation to rent

71. Tai argued that OUB was obliged to rent the Property since it was in a habitable condition and the onus was on OUB to show that it took steps to do so. His counsel relied on *Motorcycle Industries (1973) Pte. Ltd. v Indian Overseas Bank* [1992] 2 SLR 453 for these propositions. He also submitted that OUB failed to discharge its duty since it left the Property empty for ten (10) months.

72. With respect, Tais counsel had misread the decision in *Motorcycle Industries*. The case does not stand for the proposition that a mortgagee must take steps to rent a mortgaged property if it was in a habitable condition. Although Selvam JC (as he then was) held that a mortgagee in possession is bound to be diligent in collecting the rents, he qualified this proposition in his judgment to say, where the sale of the mortgaged property is contemplated within a *reasonable time*, a mortgagee may enter into possession without being liable to account for any notional rent. The burden was not on OUB to show that it had taken steps to rent out the place.

73. However, OUB had to prove that it sold the Property without undue delay so that it would not be liable to account for notional rent. OUB had shown that it sold the Property with reasonable promptitude. It took six (6) weeks after the Property was re-possessioned to prepare for the first

auction by: (i) obtaining valuations, (ii) appointing the auctioneers and (iii) carrying out marketing efforts. A further two (2) months lapsed after the first auction before an offer was secured followed by another two (2) months to complete the sale. In view of the lack of interest for the Property, it cannot be said that OUB took an unreasonably long time to secure and to complete the sale to Prospect.

74. The facts of *Motorcycle Industries* are easily distinguishable in any case. There, the property was left vacant for more than ten (10) years. Further, the mortgagee did not offer any reason to explain why it had left the property vacant. On the other hand, it is clear that if OUB were to rent out the Property in this instance, its chances of selling the Property may have decreased. A tenanted property of this nature is less attractive to certain types of buyers such as developers and owner-occupiers. In any case, the interest on Tais loan was accumulating at \$125,000 per month. It was clearly to his benefit that the Property be disposed off earlier and quickly because the expected rent of \$20,000 per month or \$240,000 per year would not have covered the interest element. OUB was not obliged to account for notional rent.

Conclusion

75. It was clear on the evidence that none of the allegations pleaded in the Statement of Claim had been made out. Consequently, I dismissed Tais claim with costs to OUB.

Sgd:

LAI SIU CHIU
JUDGE

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