

## Singapore High Court Finds Co-Mortgagors in “All-Moneys” Mortgage Jointly and Severally Liable for Debts Incurred by Each of Them Singly

The Singapore High Court has, in a significant decision, construed the language of an “all-moneys” clause in a mortgage executed by two co-mortgagors for the purpose of purchasing a property as being broad enough for one co-mortgagor to be jointly and severally liable for judgment debt incurred by the other co-mortgagor: *Oversea-Chinese Banking Corp Ltd v Lim Sor Choo* [2020] SGHC 116 (“**OCBC**”).

### Our Comments

The High Court’s decision in *OCBC*, which aligns the Singapore position with that of the United Kingdom and Hong Kong, is a timely clarification and reminder of the legal consequences of individuals entering together into joint and several “all-moneys” mortgages, even if such consequences were not foreseeable by the parties at the time of so doing.

Although this may give rise to one of the proverbial “hard cases”, it will be important for co-mortgagors to recognise that the (usually) clear language of such “all-moneys” clauses ultimately leaves little room for the court to rewrite the bargain entered into by the parties. In *OCBC*, and possibly many other housing loan mortgages where the industry standard is to require an “all-moneys” mortgage, co-mortgagors may find themselves personally liable for debts incurred by the other co-mortgagor(s) which may be wholly unrelated to the property purchased with the original loan.

Our Alvin Chia, Smitha Menon, Tan Kai Yun and Lorraine Koh advised and acted for the successful plaintiff in the action.

This update examines the High Court’s decision in *OCBC*.

### Background

In 2011, Oversea-Chinese Banking Corp Ltd (“**Bank**”) granted a housing loan of S\$2.7 million to the defendant (“**Lim**”) and Lim’s husband Tan Sing Hwa (“**Tan**”, and with Lim collectively, the “**Co-Mortgagors**”) for the purpose of purchasing a residential property.

The Co-Mortgagors executed a mortgage to secure the loan facility, which was in an “all-moneys” form that contained a covenant by the Co-Mortgagors to pay:

*“on demand made to [Lim and/or Tan] all such sums of money which are now or shall from time to time or at any time hereafter be owing and remain unpaid to [the Bank] by [Lim and/or Tan] either as principal or as surety and either solely or jointly or jointly with any other person or persons in partnership or otherwise whether on the said Accounts or otherwise in any manner whatsoever or for all other liabilities whether certain or contingent primary or collateral including (but without prejudice to the generality of the foregoing) ...”.*

Tan, a former director of Coastal Oil Singapore Pte Ltd (“**COSPL**”), had provided a personal guarantee for all sums due to the Bank in respect of facilities extended by the Bank to COSPL and Coastal Oil (HK) Limited. COSPL was placed under provisional liquidation in December 2018 and by the start of 2019, there were widespread allegations of fraud. In January 2019, following Tan’s failure to satisfy the Bank’s demand for full payment of the sums due and owing to it under the personal guarantee, the Bank commenced a suit against him and obtained default judgment against him for the full sum claimed (“**Judgment Debt**”).

The Bank then commenced the action in this case to recover the Judgment Debt from Lim on the basis that she was jointly and severally liable for it under the mortgage, and applied to court for a preliminary determination on the construction of the mortgage.

### The Assistant Registrar’s Decision

Deciding in favour of the Bank, the Assistant Registrar concluded that the language of the mortgage documents was clear, and that the Co-Mortgagors were jointly and severally liable to the Bank for the Judgment Debt.

In doing so, it accepted (as held in *AIB Group (UK) Plc v Martin and another* [2002] 1 WLR 94) that a co-mortgagor would be jointly and severally liable for the indebtedness owed to the mortgagee by the other co-mortgagor singly.

Lim appealed to the High Court against the Assistant Registrar’s decision.

### The High Court’s Decision

The High Court upheld the Assistant Registrar’s decision, finding that Lim was jointly and severally liable for the Judgment Debt on the basis of the unambiguously clear language of the “all-moneys” mortgage.

Reiterating established principles of contractual interpretation, the High Court observed that:

- (a) The text of the parties’ agreement is of first importance in ascertaining the parties’ objective intentions, and the words used by the parties are pivotal when ascertaining the meaning that the words of the contract would convey to a reasonable person with the relevant background knowledge.
- (b) The language of an agreement assumes central importance. It is not for the court to rewrite the parties’ bargain and if the language is unambiguous, the court must apply it.
- (c) More specifically, “*all-obligations*” or “*dragnet*” clauses such as the “all-moneys” clause in the mortgage are not exempt from the general principles of contractual interpretation, and the usual starting point in interpreting such clauses is that general contract principles apply.
- (d) On a plain reading of the mortgage, the scope of obligations that the Co-Mortgagors agreed to be liable for encompassed a range of liabilities, including the Judgment Debt.

- (e) The fact that Tan entered into the personal guarantee independently did not bring the situation beyond the “all-moneys” clause, as other clauses made it clear that even where (as here) two or more persons were included in the expression “the Mortgagor”, “*all covenants stipulations and provisions contained herein shall be deemed to be made by and to apply to and be binding upon all such persons jointly and severally*”.

As the High Court took the view that no principle of interpretation warranted a departure from the broadly-worded and wide-ranging language, it ruled that a plain construction of the mortgage meant that Lim was liable for the Judgment Debt.

It also rejected Lim’s attempts at narrowing the scope of the “all-moneys” clause by arguing that it was subject to qualification, that the parties had focussed on the specific issues covered by the clause when they agreed the wording, and that the “all-moneys” clause excluded liabilities which were fundamentally different from those contemplated by the mortgage.

The High Court also noted that, while at the time of entering into the mortgage, the Co-Mortgagors could not have known that Tan would subsequently incur a liability upwards of US\$131 million, neither did the Bank. It reiterated that the established rules of contractual interpretation accord paramount importance to the language used and leave no room for the courts to rewrite the express terms of contracts presented before them; even hard cases and sophisticated arguments cannot avoid what a contract plainly provides.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following:



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