

HONG KONG / JUDGMENT

CHEUNG TAK LEE v. NG CHING KIU

COURT

Court of First Instance

DECIDED

6 November 2007

CASE / FILE NUMBER

HCMP1263/2007

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bjbj on 12A of the Conveyancing and Property Ordinance, Cap. 219 and IN THE MATTER of the property known as all that piece or parcel of land registered in the Land Registry as First Floor, Lot No. 653 in Demarcation District No. 221, Sai Kung, New Territories (the Property and IN THE MATTER of a Mortgage stated in the Block Government Lease made between Ng Ching Kiu as Mortgagee of one part and Lau Ut Po earing: 6 November 2007 Date of Judgment: 6 November 2007 J U D G M E N T AUTONUMOUT These proceedings concern the property known as all that piece or parcel of land registered in the Land Registry as First Floor, Lot No. 653 in Demarcation District No. 221, Sai Kung, New Territories (the property). AUTONUMOUT The plaintiff is the registered owner of the property. According to the Block Government Lease it appears that there was an encumbrance registered against the property namely, a mortgage between Mr. Lau Ut Po as mortgagor and Mr Ng Ching Kiu as mortgagee for a sum of \$8. AUTONUMOUT As stated in the land search of the property the remark is made that : AS STATED IN BLOCK GOVERNMENT LEASE THE LOT IS SUBJECT TO MORTGAGE IN FAVOUR OF NG CHING KIU FOR \$8.

AUTONUMOUT The plaintiff seeks an order to declare the property to be free from the mortgage. The mortgage was made a long time ago. The Block Crown Lease is dated 27 March 1905.

AUTONUMOUT I am satisfied that the provisions of Section 12A of the Conveyancing and Property Ordinance apply on the evidence before the court. AUTONUMOUT Mr Lau Ut Po was the mortgagor. His successor was Mr. Lau Ki Yau. He passed away on 12 February 1993 on the evidence before me. The mortgagor being the other party to the mortgage has passed away and there is no information about who has succeeded his estate. AUTONUMOUT The encumbrancer being Mr. Ng Ching Kiu, on the evidence before the court, cannot be found. In the circumstances it seems to me that this is a proper case for directing or allowing payment into court of a sum of money sufficient to redeem the encumbrance. AUTONUMOUT In *Man Chi Kan v. Man Tsak Lun*, HCMP 4945/2002, [2003] 2 HKLRD 489 Deputy Judge Lam (as he then was) considered that a notional interest at the rate of 20% per annum was to be adopted. I have considered that a notional interest rate of 20% per annum is a proper interest rate to adopt. AUTONUMOUT On the evidence before me taking that same interest rate of 20% per annum the total amount which would be owed to Mr. Ng Ching Kiu by Mr. Lau Ut Po from the time of the government lease in 1905 would amount to HK\$172.80. AUTONUMOUT In the circumstances I am satisfied that that sum should be sufficient to redeem the mortgage and any interest thereon. The plaintiff is willing

to pay that money into court. I give leave to the plaintiff to pay that sum into court. I also order that upon payment of the said sum into court I give leave to the plaintiff to apply for a declaration freeing the property from the mortgage upon payment. AUTONUMOUT I make no order as to costs. (Arjan H Sakhrani) Judge of the Court of First Instance Miss Chan Pui Dik Beatrix of M/s Ho and Wong, for the Plaintiff PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk S T U V A B C D E F G H I J K L M N O P Q R S T U V (#p# r p# r p# |vpj^ r p# (#p# r p# r p# "@AB9D / Jz @m2z]C]6 uxB26I]C]6 & 6" abc-Sak-HCMP.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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