

BANKING & UNDUE INFLUENCE

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In many cases between banks and customers, the issue of “undue influence” has been raised. What is the legal meaning of undue influence? In Morgan case, the husband who was in difficulties with business was unable to meet repayments due under a mortgage secured over the home which he owned jointly with his wife. The mortgagee commenced proceedings to take possession of the home. To avert that, the husband made refinancing arrangements with a bank secured by a legal charge in favor of the bank.

The manager called at the home to get the wife execute the charge. The wife made it clear that she had little faith in her husband’s business and she did not want the legal charge to cover that. The manager assured her, in good faith, but incorrectly that the charge only secured the amount advanced to refinance the mortgage. In fact the charge was by its terms unlimited and could extend to all the husbands liabilities, although it was the bank intention to treat it as limited to secure the amount to refinance the mortgage.

The bank obtained an order for possession of the home after they fell into arrears. The husband died without owing any indebtedness to the bank for business advances. The wife appealed against the order for possession, contending that she had signed the charge because of undue influence from the bank and it should be set aside. The bank contended that the defense of undue influence could only be raised when a deft had entered into a transaction which was manifestly disadvantageous to him and, since the husband had died without business debts owing to the bank, the wife was not disadvantaged but in fact had benefited because it had averted the proceedings for possession by the prior mortgagee.

The Appeal allowed the wife appeal, holding that a special relationship had been created which raised the presumption of undue influence.

The House of Lords, held the facts were far from relationship of undue influence or from transaction in which an unfair advantage was obtained by one party. Further the charge, limited as it was by the manager declaration to securing the loan to refinance the mortgage, was not disadvantageous to the wife. It meant for her the rescue of her home upon the terms sought by her. The bank never crossed the line, nor was the transaction unfair to the wife. It was an ordinary banking transaction whereby the wife sought to save her home, and she obtained an honest and truthful explanation of the bank intention which, notwithstanding the terms of the charge, was correct. The bank had not sought to make the wife liable, or to make her home the security, for any debt of her husband other than the loan and interest necessary to save the house from being taken away from them, in discharge of their indebtedness to the prior mortgage.

The outcome of this case, banks are to be very careful, honest and genuine in all dealings with customers, otherwise undue influence could easily be taken against them.