

Lloyds Bank Plc v Egremont and another

[1990] 2 FLR 351

23/02/1990

Court

Court of Appeal

Facts

In 1981 the defendants bought a matrimonial home as joint tenants with the benefit of a mortgage from the bank. The husband then obtained an overdraft from the bank in order to start a business. The bank required his personal guarantee and a second charge upon the house as security. On 20 May 1982 the husband signed a guarantee on the bank's standard form and on 11 June he and his wife signed a legal charge on the bank's standard form Charging the house as security for 'all monies . . . now or hereafter due and owing' from the husband 'whether as principal or surety'. They signed the form in the office of their solicitor who added in manuscript that he had explained to the wife the contents of the document. After that both the business and the marriage ran into difficulties. The wife moved out of the matrimonial home in September 1986 with the two children of the marriage and subsequently obtained a divorce. The husband was made bankrupt with debts to the bank by 1990 of some £11¼ m. At the hearing of the bank's claim for possession of the house it was common ground that neither the bank nor the husband had exercised undue influence over the wife, and that although the wife had an arguable counterclaim for liquidated damages in respect of certain alleged misrepresentations by the bank, the existence of her counterclaim did not provide her with a defence to the claim for possession under the mortgage. The judge made the order sought. The wife appealed, contending that the charge was unenforceable against her because: (1) the bank had had a duty to disclose to her the existence of the guarantee, the fact that the charge was unlimited in scope and duration and the fact that it would continue as security even after she and her husband had separated; (2) the bank was under a general duty of disclosure because she was its customer; (3) she had signed the charge as a result of innocent misrepresentation by her husband who had been acting as agent for the bank.

Held

Held – dismissing the appeal –

(1) The general rule was that there was no duty of disclosure in commercial transactions, other than transactions *uberrimae fidei*, except with regard to anything that might not naturally be expected to take place between the parties. Since the transactions in the present case were of the commonest business kind and the wife had been in a position to know what they were it followed that the case came within the rule and that the charge could not be set aside on the basis of non-disclosure.

(2) As regards the bank's duty of disclosure to a customer, assuming that the bank had a general duty to advise the wife as to the scope and effect of the second mortgage and had not done so, that could do no

more than provide her with an alternative basis for her claim for damages. It had no bearing on the question whether the bank was entitled to possession.

(3) Even if the wife's signature to the charge had been obtained by misrepresentation on the part of the husband that misrepresentation had not been made by him as agent of the bank, since the bank had not left it to the husband to obtain the wife's signature but had sent the documents to the parties' solicitors and had been entitled to assume that they would provide the wife with independent advice. It followed, therefore, that the wife had no defence against the bank's claim for possession.

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