

Dispute Resolution  
Case Law Update  
Rosling King LLP



### Background

Mr & Mrs Menon (the “**Menons**”) charged their residential property in West London to Bank of Singapore Limited (the “**Bank**”) in March 2014. The legal charge allowed for the appointment of receivers by the Bank in events of default. In such circumstances the receivers would be treated as the borrower’s agents and the receivers had the power to seek possession of the property. The Defendants defaulted, following which Pask and Goode of GVA Grimley (the “**Receivers**”) were appointed as joint fixed charge Receivers in November 2017.

The Receivers brought possession proceedings in the County Court in the names of the Menons (acting by the Receivers). The Menons defended the claim, disputing that the Receivers could bring a valid possession claim on the basis that the Receivers were deemed to be their agents and agents cannot sue their principal. The Menons also argued their right to occupy the Property superseded the Receivers’ right to possession. Finally, the Menons sought to rely on Section 36 of Administration of Justice Act 1970 (“**s.36 AJA 1970**”) in attempt to delay enforcement.

The County Court concluded that the Menons’ right to possession of their property was postponed to the Receivers. In terms of s.36 AJA 1970, the County Court concluded that as the Receivers did not derive title from the Bank, s.36 AJA 1970 did not apply and the court had no discretion to delay enforcement. The County Court therefore granted a possession order to the Receivers.

The Menons appealed the County Court’s decision. The High Court considered two questions on appeal; (1) can receivers appointed by a mortgagee seek possession against the mortgagors by suing in their own name as Receivers; and (2) does the court have statutory discretion to postpone possession on terms pursuant to s.36 AJA 1970.

### Decision

The High Court firstly considered whether the Receivers could bring the proceedings in their own name. The Judge concluded that the current proceedings, with the Menons acting by the Receivers v the Menons, were not a form of proceedings which could succeed. The court considered it was not possible to have the same people (the Menons) on both sides of the record. The Court permitted the Receivers to pursue the Court action as amended in the names of the Receivers (as joint fixed charge receivers) v the Menons.

The High Court then considered whether the Receivers had a right to possession of the Property as against individual mortgagors in possession. The court found that the power to take possession is one that can be asserted against the mortgagors by the Receivers. The court recognised the inconsistency with normal agency principles but concluded that the agency of Receivers is not a normal agency. The Receivers had the power to take possession, and if it is not given up, the Receivers must have power to take proceedings, albeit in their own name. The Receivers were therefore entitled to possession of the property against the Menons.

In relation to the application of s.36 AJA 1970, the court considered that Receivers do not fall within the statutory definition of 'mortgagee', nor do they derive their title to the property from the mortgagee. However, whilst the Receivers are agents of the mortgagors, this construction fails to reflect the reality that receivers are appointed by the mortgagee. In light of this, the court concluded that as the Receivers are in reality making a claim for the mortgagee's benefit, the Menons should have the same opportunity to invoke the court's discretion under s.36 AJA 1970, as they would if the Bank had been a claimant.

#### Commentary

The High Court's decision provides clarity for receivers, mortgagees and mortgagors concerning the ability and capacity in which to bring possession proceedings and the application of s.36 AJA 1970.

The court has clarified that receivers are able to seek possession against individual mortgagors provided the proceedings are brought in their own names and that s.36 AJA 1970 can apply to possession claims brought by receivers appointed by a mortgagee.

When proceedings are brought in the receiver's name, they could be exposed to personal liability, which could include costs orders. In light of this, and the seeming extension of the s.36 AJA 1970 discretion to include possession claims brought by receivers, receivers should ensure that they have taken all reasonable steps before embarking on litigation. Failing to do so may lead to the court exercising its discretion and making appropriate costs orders.

For further information, please contact [Luke Turtle](#) or the Partner with whom you usually deal.