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Last-Minute Injunction to Restrain Sale by Mortgagee

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Six Bruce Pty Ltd v Jadig Finance Pty Ltd, Supreme Court of Victoria
[\[1\]](#)

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Ninety minutes before the auction, the Supreme Court of Victoria granted an interlocutory injunction to stop a lender from proceeding with the sale of a mortgaged property, notwithstanding that the borrower had still not paid the sum due under the mortgage. The injunction was for a period of 30 days to allow the borrower to repay the amount due through a refinancing of the property for which the borrower held a letter of unconditional approval from the re-financier.

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The main question was whether the letter of unconditional approval obtained by the borrower for the re-financing of its debt was sufficient for the court to intervene to protect the borrower's equitable right of redemption, which is the right to discharge the mortgage by payment of the debt. [\[2\]](#) The court said:

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"... in the present matter, the [borrower] has adduced evidence that it has secured unconditional approval to refinance its arrangements including in respect of the loan agreement. Evidence of that approval is in writing in the form of the 6 September letter which appears to be under the seal of the incoming financier..."

"... I consider that, with the unconditional finance approval obtained by the [borrower], there exists a serious question to be tried as to whether, by proceeding to exercise its power of sale, the [lender] would be acting unconscionably so as to warrant the grant of equitable relief."

This case appears to be a shift in Australia towards relaxation of the general rule laid down by the High Court of Australia in *Inglis v Commonwealth Trading Bank of Australasia* [\[3\]](#) that an injunction will not be granted to restrain a mortgagee from exercising his power of

sale unless the debt due under the mortgage is paid.

Position in Malaysia

Section 266 of the National Land Code provides that a chargor has the right to tender payment at any time before the charged property is sold. Pursuant to this section, an order for sale will cease to have effect if the chargor pays the sum due into court or to the land administrator (as the case may be).^[4]

The Malaysian courts have held that the doctrine of equity of redemption is not applicable to statutory charges under the NLC.^[5] It may be therefore that the courts in Malaysia will be slow in restraining the sale of a charged property pursuant to an order for sale in cases where there is no actual payment into court or to the land administrator.

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^[1] [2018] VSC 552

^[2] *Sun North Investments Pty Ltd (as trustee) v Dale & Anor* [2013] QSC 44 at para [74]

^[3] (1972) 126 CLR 161

^[4] *Malaysia Building Society Bhd v Merit Aim Sdn Bhd & Anor; Cameron Mall Sdn Bhd & Anor (Intervenors)* [2012] 4 CLJ 269; *Bank Bumiputra Bhd, Ex-Parte* [1992] 2 CLJ (Rep) 170

^[5] *Malayan United Finance Bhd v Tan Lay Soon* [1991] 1 CLJ (Rep) 292; *Talam Corporation Bhd & Anor v Bangkok Bank Bhd & Anor* [2017] 2 CLJ 365; *Zulina Mohd Omar v Public Bank Bhd* [2018] 7 CLJ 586