

Claim on bank was parasitic on one against husband

COURT OF APPEAL
published February 13, 2001
First National Bank plc v
Walker and another
Before Sir Andrew Morritt,
Vice-Chancellor,
Lord Justice Chadwick
and Lord Justice Rix
Judgment
November 23, 2002

A claim against a bank to set aside a charge and the loan which it secured for the undue influence of one joint and several debtor over the other was secondary to and parasitic on the existence of such a claim by one debtor against the other. Where a woman sought to set aside a charge on the ground that it had been procured by her husband's undue influence of which the lender had notice, it was not acceptable for her to pursue a claim for ancillary relief on the footing that the charge was valid and to defend a claim for possession on another footing that it was voidable. If she attempted to do so then she risked losing one or other remedy. The Court of Appeal so held allowing an appeal by First National Bank plc against Judge Brandt at Colchester County Court who determined that the second defendant, Laura Walker, had not affirmed, ratified or elected to confirm a transaction whereby she joined with her husband, Anthony James Walker, the first defendant, in the mortgage of the jointly owned matrimonial home.

THE VICE-CHANCELLOR said that in January 1988 the defendants acquired the matrimonial home as beneficial joint tenants. In January 1991 they charged the matrimonial home to First National Bank as security for a loan for use in a business carried on by the first defendant. The property was already subject to two prior mortgages in favour of Barclays Bank. The marriage broke down. On March 25, 1993 a decree absolute was made for its dissolution. In those proceedings the wife applied for ancillary relief. In May 1993, the bank demanded repayment of the outstanding balance and initiated proceedings for possession. On February 10, 1994 the application for ancillary relief came before a district judge who made a property adjustment order requiring the husband to convey his interest in the property to the wife absolutely. On February 18, 1994, the wife, through the same firm of solicitors, served, her defence and counter claim in the bank's action. She admitted that she signed the charge but averred that her signature was procured by the undue influence of her husband when acting as agent for the bank. On September 6, 1995 a conveyance was executed transferring the husband's share in the matrimonial home to the wife. Clause 4 of the conveyance provided: "Nothing in this deed shall affect or prejudice the continuing nature of the first, second and third mortgages which shall be security for all liabilities present and future of the wife and husband to the bank which the wife and the husband hereby acknowledge. On September 15, 1997 an amended defence and counterclaim was served in the possession action in which the wife averred that the execution of the agreement and the charge had been procured by the husband's undue influence and that he bank had actual or constructive notice of the relevant facts.