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Winding-up of Borrower Does Not Limit Interest Claimable from Third Party Chargor

CIMB Bank Berhad v DB Industrial Builders Sdn Bhd
(Court of Appeal Civil Appeal No J-02(IM)-1960-10/2019)¹

In *CIMB Bank*,² the High Court decided, in a foreclosure action brought by the chargee bank against the third party chargor, that the chargee bank was only allowed to charge interest limited to six months from the date the borrower was wound up.

The High Court relied on s 524(3)(b) of the Companies Act 2016 and held that the interest claimable from the third party chargor was limited to the interest claimable against the wound-up borrower, even though the third party chargor is not wound up.

On 23 June 2021, the Court of Appeal unanimously allowed the chargee bank's appeal and set aside the High Court's order limiting the interest claimable against the third party chargor.

The Court of Appeal agreed that s 524(3)(b) had no application to the interest claimable from the third party chargor who is not wound up. It only applies to limit interest claimable by a secured creditor from a wound-up company, which was not the case here.

The effect is that interest continues to accrue and is claimable by the chargee bank from the third party chargor without limitation. The fact that the borrower was wound up, and the interest claimable from the borrower may be limited as a result, does not affect the chargee bank's rights against the third party chargor. The third party chargor's liability may be more extensive than that of the borrower.

The decision of the Court of Appeal would certainly be welcomed by financial institutions. It settles the inconsistent position between interest claimable from third party chargors and from

¹ At the High Court, Johor Bahru High Court Originating Summons No JA-24FC-1569-10/2018
² [2019] 1 LNS 1916 (HC)

guarantors where the borrower has been wound up or is a bankrupt.

In relation to guarantors, the Federal Court in *Andrew Lee Siew Ling*³ had previously decided that interest claimable against a guarantor (who was not a bankrupt) was not affected by the winding-up of the borrower.

The present decision thus puts interest claims against the third party chargors on the same footing as guarantors.

As for how the interest stipulated in s 524(3)(b) is to be calculated as against a wound-up company, which many have found to be confusing, this remains to be authoritatively decided. It did not arise for consideration here as the section was not applicable to the third party chargor who had not been wound up.

Sean Yeow and **Andrea Chew** of [Lee Hishammuddin Allen & Gledhill](#) acted for the chargee bank.

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