

United Bank of Kuwait plc v Sahib [1997]

Evidence

Sahib was a defendant who owned half of a house's share. His title documents were held to the good of other respondents, the SGA bank, as the warranty of the loan. During the procedure of the house sale, the complainant, the United Bank of Kuwait, received a foreclosure over the share of the main respondent. The SGA bank stated that as the title documents were given to them as the warranty for the loan, the fair loan agreement was created according to which the SGA bank became a pledge holder. This made the United Bank of Kuwait ask the court to proclaim the SGA bank to not have a fair loan agreement.

Problematics

The main problematics constituted in precedents that were used before. The SGA bank stated that the fair loan agreement resulted in the provision of the title documents to the lender as was mentioned in the case of *Russel v Russel* of 1783. On the other hand, the United Bank of Kuwait stated that this principle did not survive the Law of Property Act of 1989 and its section 2(1). According to this act, any kind of change to the interest in land should be fulfilled in writing.

Resolution

The court stated that the aforementioned act had the same meaning as the cognominal act of 1925 which broadened the meaning of change or "disposition" to charge or mortgage. This meant that the provision of title documents was held in order to create a charge and the Act of 1989 should be used. This meant that no principle as described in the *Russel v Russel* case of 1783 can be used in terms of mortgages.

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