

**NOTE for this task:**

- Draw a timeline of the facts.
- Identify the legal issues (see Document ‘relevant law’).
- Against whom should legal action be taken?
- What legal argument can be used to defend the case?

**The case of Mr. and Mrs. Orion**

Mr. and Mrs. Orion got married in 1993. For the past 16 years or so their matrimonial home has been 105, Farmjam Lane, Slough. They purchased their matrimonial home in 2004 in their joint names. By 2017 the amount outstanding on the building society mortgage was £25,000 or thereabouts.

Mrs. Orion had passed secretarial examinations and later worked as an office manager. Mr. Orion is a chartered accountant. He had also an interest in a company, Coldrow Fabrications Ltd., and was the company's auditor. He was negotiating with the other shareholders to take an increased stake in the company. When Mr. Orion first became associated with the company, he made the company change bank twice in order to be managed by Mr. Roger Tucker when Tucker was transferred to other bank sub branches. He and Mr. Orion were acquainted with one another and on first name terms.

The company had agreed an overdraft (= *un découvert autorisé*) facility with the bank that by December 2016 had been raised to £40,000. In the first three months of 2017 a number of the company's cheques were dishonoured on presentation.

In April 2017, Mr. Orion endeavoured to obtain an increase in the overdraft facilities available to the company. Mr. Tucker agreed to allow an overdraft facility of £60,000 for one month. His note of 2nd April 2017 records that:

"I have agreed to mark an overdraft facility of £60,000 for one month, as Orion is presently in the course of remortgaging his house to raise the £60,000. The mortgage as security for the overdraft. If there is any problem with this (wife may be the problem) his son has raised £40,000 which if necessary will be in substitution of the £60,000".

Mr Orion returned home to his wife and told her he was excited:

“the Company is getting a new overdraft with HSBC for £60.000! We can start buying new machinery for the company!”

The agreed £60,000 overdraft was utilised by the company. Discussions between Mr. Tucker and Mr. Orion continued. By mid June 2017, Mr. Orion had repeatedly asked to rise the company's overdraft. On 22nd June 2017, Mr. Orion asked again. Mr. Tucker

wanted additional security. It was eventually agreed that the company would be allowed an overdraft facility of £135,000, reducing to £120,000 after three weeks. As security it was agreed that the liability under the guarantee would be secured by a second charge over the house which was believed to have an equity of about £100,000. In addition Mr. and Mrs. Orion's son, who also worked in the company, was to provide certain security.

That day, Mr Orion told his wife:

“Remember the overdraft we talked about?” (...)

Later in the conversation “The bank has asked for the house as security for the overdraft. The company needs the overdraft and other bank loans to make sure it can stay afloat, honey!”

Mr. Tucker gave instructions for the necessary security documents to be prepared. These included a guarantee to be signed by Mr. Orion and a legal charge of the house to be signed by both Mr. and Mrs. Orion. When the documents were ready, Mr. Tucker sent them to the Burnham branch to await signature by Mr. and Mrs. Orion. Together with the documents he sent an important memorandum to the Burnham sub-branch. The memorandum said this

Mr Orion told his wife:

“I need you to go to the bank on the 1st July to sign the documents”

but she wasn't sure about signing. She said she didn't want to risk all they had. She did not come to the bank on the 1st July.

On the 1st July, Mr. Orion signed the documents. The guarantee, the legal charge and the side letter were produced for his signature by the Bank Clerk, Mrs Kent. That day Mrs Kent was indisposed and, after barely saying hello to Mr. Orion, she produced the documents, Mr. Orion signed and she witnessed his signature.

On the next day, 2nd July, Mr. Orion waited for his wife at the bank again but she didn't come. He went home to get her and became extremely emotional and said to her that if she did not sign, the whole company would go bankrupt and their son John would lose his home as well. She described her husband as going quite white and in tears. He told her:

“It's only for a short term, like three weeks! by which time the mortgage would be through...The company has an overdraft, but it is doing well and Roger Tucker just needed some security to show his superiors and to hold for three weeks”.

Mr Orion eventually brought his wife to the bank sub-branch. The documents, already signed by Mr. Orion, were produced by Mrs Kent. Like the previous day, Mrs Kent was

angry, hardly said a word and produced the papers for signing. Mrs. Orion felt she had done something wrong and quickly signed the legal charge and the side letter. She did not read them, they had been folded back where appropriate to show the places to be signed. Miss Kent pointed out to her where she was to sign. Mrs. Orion also wanted to get out of the bank as quickly as possible because she had errands to run.

The guarantee signed by Mr. Orion was a guarantee, unlimited in amount, of the liabilities of the company to the bank. The legal charge, signed by both Mr. and Mrs. Orion, contained a charge of 151, Farmjam Lane to secure the payment of any liabilities of Mr. Orion to the bank. The guarantee and the legal charge were dated 3rd July 2017. The side letter, also signed by both Mr. and Mrs. Orion, was not dated and reads as follows:

A copy of the guarantee was not given to either Mr. Orion or Mrs. Orion.

On the strength of these security documents the bank allowed the company's overdraft, which was standing at about £107,000 when the documents were signed, to increase to £135,000. But the company's indebtedness continued to grow and soon exceeded the £135,000 figure. By October 2017 the indebtedness was over £154,000 and in November formal demand was served on Mr. Orion calling for payment pursuant to the guarantee.

There was an issue between the bank and Mr. Orion as to Mr. Orion's understanding of the documents he had signed. In particular, Mr. Orion alleged that the effect of the guarantee had not been clearly stated to him by Mr. Tucker. The learned judge, however, accepted Mr. Tucker as "*a man of integrity and a truthful and reliable witness*". He had no hesitation, he said, in accepting the evidence of Mr. Tucker wherever it conflicted with that of Mr. Orion. Accordingly Mr. Orion's liability under the guarantee was established by the judgement in that case at trial. He has not appealed.

Mrs Orion is devastated, the bank is repossessing her family home.