

HIGHER RIGHTS OF AUDIENCE ASSESSMENT

IN RESPECT OF CIVIL PROCEEDINGS

THE PRACTICAL ASSESSMENT

TRIAL BUNDLE FOR MINI-TRIAL

The evidential material to be used in the mini-trial consists of the following witness statements/affirmations:

1. The witness statement of Mr Rex Lai, the Plaintiff;
2. The witness statement of Ms Mimi Lai for the Plaintiff;
3. The affirmation of Ms Julia Tang, the Defendant; and
4. The affirmation of Mr John Mason for the Defendant.

HCA 1342/2019

Rex Lai v Julia Tang

Witness Statement of Rex Lai

I, Rex Lai, of Serenity House, No.344, Mei Tin Road, Sha Tin, do say as follows:

1. I am the Plaintiff in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I confirm that the contents of the Affirmation previously sworn by me in these proceedings are true and accurate.
3. I have also read the draft witness statement of Mimi Lai (my wife) which I understand will be adduced in the proceedings. Insofar as the matters stated therein are within my knowledge, I believe that they are true.
4. I am surprised and disappointed to see that the Defendant has responded so strongly to this action. While I have always had a good relationship with her (and cherish our relationship), I must stress that I am motivated not by any ill-will towards the Defendant. She is now (as she has always been) welcome to visit Serenity Garden, which is my property.
5. In her Affirmation, the Defendant seemed to suggest that I was selfishly taking advantage of her by taking her words at Mr Sebastian's funeral out of context. I must say this is not the truth. In fact, I did post a letter containing a HK\$20 bank note to her in 2005. But she returned it to me during one of her visits to Serenity House, saying there was really no need for it. This is why I have stopped posting the HK\$20 rent in subsequent years. I find it sad and hurtful that the Defendant now tries to paint a picture of me as someone who is unscrupulous enough to take advantage of their grief at the loss of her husband.
6. As the Defendant affirmed, the Defendant often came to see Serenity House when she was back in Hong Kong. However, what the Defendant does not mention is that every time she came, she would call me beforehand and arrange a time. Every time a visit happens, she would knock on my door at Serenity House first, where my wife, Mimi, and I would welcome her as a family. Serenity Garden only played a very minor

part of these visits. In fact, if the weather was inclement, we would not go out to Serenity Garden at all.

7. As to the Defendant's claim that she would be playing the role of the hostess and I that of her domestic staff, this is not a true picture of our interactions. As the Court is aware, I was brought up serving Mr Daniel's family, and I accept that my traditional and deferential manners may make the Defendant feel that she is of a higher social status. But my wife Mimi was (before her retirement) an investment banker and (in her youth) a former Hong Kong fencing champion. During the Defendant's visits to me, Mimi and the Defendant would be on very friendly and informal terms, and this could not possibly be interpreted as a relationship of hostess and housekeeper.
8. Prior to this litigation, I was not aware of any occasion where the Defendant came to Serenity Garden without our knowledge. Of course, I do not know whether the Defendant entered into Serenity Garden in 2010 in the middle of the night.
9. I must say though that the Defendant is mistaken in thinking that the gates were (or now are) the main access to Serenity Garden. From before Mr Sebastian's demise, the main entrances to Serenity Garden have been (A) through Serenity House or (B) through a turnstile with a lock, which is locked most of the time, and a sign "*Serenity Garden, Private Land*". A photograph of the turnstile is attached as Annex 1 to this witness statement.
10. I would also say that if the Defendant did make entry into the Garden through the gates, it would have been a very difficult exercise. Through long disuse, ivy has grown around the gates. A photograph of the gates as in 2020 is attached as Annex 2 to this witness statement. As far as I can remember the situation was much the same in 2010.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

HCA 1342/2019

Rex Lai v Julia Tang

Witness Statement of Mimi Lai

I, Mimi Lai, of Serenity House, No.344, Mei Tin Road, Sha Tin, do say as follows:

1. I am the wife of the Plaintiff in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I have read the Affirmation and draft Witness Statement of Plaintiff, my husband, Rex Lai ("Rex"), as well as the Defendant's Affirmation. I would like to add some observations from my own experience.
3. I know long before my marriage to Rex in 2005 how much he cared for Serenity Garden. In fact, it was one of the first places he showed me when we started dating. He has spent a lot of time and effort to make it a very special place, and I fully understand and support him in applying to the Court for formal recognition for his ownership of it.
4. While I knew that Serenity Garden (as well as Serenity House itself) used to belong to the late Mr Sebastian's family, I have never heard my husband mention anything about having to pay rent to anyone for the use of it. In fact, if he did, I would have had very serious concerns about the time and money he poured into Serenity Garden.
5. I find the picture the Defendant paints of her visits to Serenity House untrue in every way. She seems to suggest that we saw ourselves as kind of feudal underlings, when nothing could be further away from reality.
6. To the contrary, we have always seen the Defendant, who has a walking disability, as a dear lady, who was uncommonly cheerful, open and friendly. This was only reason we welcomed her into our house time and again. If she had attempted to tell us how to run Serenity Garden, we would have refused her entry.
7. I must stress in none of her visits to Serenity House did she say anything about how Serenity House or Serenity Garden should be run. Instead, she was always full of

interest and curiosity as to the plants the Plaintiff has planted and the statues we put there.

8. In that way, the Defendant was really no different from our neighbours, many of them were school children, who come to visit Serenity Garden. We always welcomed them and gave them treats. We would also tell them off if they picked the flowers or broke things. I remember a few occasions on which some school children came around and broke things when the Defendant and her friends were visiting: the Defendant did not say anything to intervene. This was totally unsurprising because we were well-known in the neighbourhood as the owners of Serenity House and Serenity Garden.
9. As I stated above, even when I first met her, the Defendant did not walk very well. I find it somewhat unlikely that she would come into Serenity Garden late into the night by opening the gate with the ornate key, especially when there has always been a turnstile available for easy entry. In any case, I do not see how one midnight visit unknown to us can be relevant to this action.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

HCA 1342/2019

Rex Lai v Julia Tang

Affirmation of Julia Tang

I, Julia Tang, of Flat 5A, Wisdom Court, 5 Hatton Rd, Mid-Levels, do say as follows:

1. I am the Defendant in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I confirm that the contents of the Affirmation previously sworn by me in these proceedings are true and accurate.
3. I have also read John Mason's draft Witness Statement, which I understand will be adduced in the proceedings, the contents of which, insofar as they are within my own personal knowledge, I confirm are true.
4. I inherited Serenity Garden from my husband, Sebastian Tang, when he passed away in 2005, and since then have been the registered owner of that plot of land.
5. I have read the Affirmation of the Plaintiff ("Rex"), as well as his Witness Statements and that of his wife, Mimi Lai ("Mimi").
6. The picture Rex and Mimi paint of our relationship is inaccurate and misleading. In years and in social position, I was (and am) very much their junior. From Rex's own Affirmation, one can see that he is already 70 years old, whereas I am only 33. Before her early retirement, Mimi was an accomplished athlete and later an investment banker, whereas I have not worked after graduating from university. Yet Rex and Mimi have always been very deferential to me in our interactions. While Mimi would usually call me by my first name, Rex always addressed me as "*Mrs Tang*". A true copy of the Christmas card given to me by Rex and Mimi in 2009, where I was addressed as "*Mrs Tang*" is attached as Annex 1 of this Witness Statement.
7. I do not remember the incident mentioned in Rex's witness statement where I returned the HK\$20 rent to him. However, even if I did return the rent, it did not mean I have decided to give up my ownership over Serenity Garden. As I said, every time my friends and I went back to Serenity Garden, Rex and Mimi would go out of their

way to treat us to a sumptuous meal in Serenity House. If (as Rex states in his Witness Statement) he offered to pay the rent in such a social gathering, I would have refused as it would simply have been too socially awkward to accept.

8. Rex and Mimi seem to make out that my visits to Serenity Garden were primarily to see them and to have a meal with them, but this could not be further from the truth. Serenity House, for some reason unknown to me, smelled always of garlic whenever I visited. Despite my attempts to be sociable and pleasant, I cannot say I always enjoyed my visits there. Rex, while deferential – sometimes to the point of obsequiousness – was in my experience quite long winded. He stuck me as quite a lonely person from the start.
9. Rex and Mimi seem to suggest that I always arrange to meet them in Serenity House first before going into Serenity Garden. What they have forgotten to mention is that, in about 2005-2010, I used to turn up to Serenity Garden without any forewarning, to have time alone and to think of my husband. Rather insensitively (but innocently I thought), Rex would rush out and fuss over me, very earnestly inviting me in for tea or to have a meal with them. Such invitations had a very bad effect on my mood. So as to not disappoint them, I ate with them a few times. Afterwards, in order to avoid a similar situation, I decided to make an appointment to see them first, to get the social interaction out of the way. I would then bid them farewell and be alone with my thoughts in Serenity Garden, free from their (frankly unwanted) attentions.
10. Rex and Mimi speak of the efforts they have put in to cultivating the flora and fauna in Serenity Garden. But they seem to forget that they have done the same for my late husband and his family for many years at their request. I too am very fond of their work and wholeheartedly approve of it. This is why I keep up a good relationship with them: I genuinely appreciated (and still appreciate) what they were doing.
11. While, appreciating their expertise and autonomy, and I seldom give directions on what they should do to Serenity Garden, it is not the case that I never gave them directions over its management. In fact, I expressly requested that purple roses be planted next to the pond in memory of my late husband, and this was accordingly done. I remember during one of my visits in 2013 I found that many of the roses had wilted. I was in a bad mood and told Rex off in sharp terms. He apologised and (to his credit) has to this day maintained the purple roses by the pond well.
12. Rex and Mimi speak in pitying terms of my “*disability*” and seem to doubt whether I have the strength to break the ivy and open the gate. While it is true I have a slight congenital limb, it is a gross exaggeration to say that I am under some kind of disability. If anything, I am much fitter than Rex and Mimi.

13. In my memory, it was rainy when I entered the Serenity Garden in the middle of the night and wept. I turned the key and shook the gate until all the ivy broke loose and it opened. It was a cathartic experience for me. A lot of leaves and branches fell off from the gates that time, which Rex and Mimi must have noticed.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

HCA 1342/2019

Rex Lai v Julia Tang

Affirmation of John Mason

I, John Mason, of Flat no. 17A Howards Mansion, No. 346 Mei Tin Road, Sha Tin, do say as follows:

1. I am a friend of the Defendant ("Julia") and have known her for many years. For the past two years, I have also been a resident of Howards Mansion, which is just next to Serenity Garden.
2. I have read the Affirmations of the Plaintiff ("Rex") and Julia, as well as their Witness Statements, and that of Rex's wife, Mimi Lai ("Mimi").
3. Rex and Mimi say that they are known in the neighbourhood as the owners of Serenity Garden. This is untrue.
4. The story of Wuthering Mansions and Serenity Garden is and has always been part of the folklore in Howards House. In fact, stories from the time of Mr Daniel Tang often make it into promotional literature on Howards House produced by real estate agents. Some newspaper cuttings of such promotional literature are attached as Annex 1 to this Witness Statement.
5. As you can see from the newspaper cuttings, Serenity Garden is always described as Mr Daniel Tang's old botanical gardens. In fact, in many interviews, Rex himself told interviewers he was only one of Mr Daniel Tang's old domestic staff "*looking after Serenity Garden for him*". Magazine cuttings of these interviews are attached as Annex 2 to this witness statement.
6. This was also our understanding as neighbours of Serenity Garden. While the turnstile does (and for as long as I can remember has) a sign "*Serenity Garden, Private Land*" next to it, the turnstile is in fact never locked. School children and adults alike would go in, day and night, to enjoy themselves.
7. The understanding around the neighbourhood (as well as of myself) has always been that Serenity Garden is open and kept up by Mr Daniel Tang's family, and that it is a

public utility for the benefit to the whole neighbourhood. In fact, I have always been under the impression that Rex was paid by Mr Daniel Tang's family for its upkeep.

8. Julia is very well known and well liked in the neighbourhood. With her beautiful looks and her kind heart, she has long been nicknamed "*the Princess Julia*" by many of my neighbours. It would only be a mild exaggeration to say that her visits to us are like having minor royalty visit. The guards would all come out and shake her hand, and the children would gather round her. Rex and Mimi have always behaved very deferentially towards her: the change is especially marked for Mimi. Out of the Julia's presence, she carries herself erect as an authoritative lady of weight, but with Julia she was always meek and rather subservient.
9. If Rex and Mimi had attempted to treat Serenity Garden as a private place to the exclusion of the residents of Howards House, I am sure many of us (young and old) would have spoken out against it. I would certainly have told Rex and Mimi in no uncertain terms that this is a breach of the trust placed in them by the late Mr Daniel Tang's family. In fact, I (along with many of my neighbours) find it entirely shocking that Rex would even contemplate taking legal action to claim Serenity Garden as his own.
10. Finally, I feel I should add that I am aware that Rex and Mimi were jointly convicted of employing a person not lawfully employable in around 2009. I do not know much about the details, but I was told that they were paying another family to have their domestic helper come over to Serenity House and do the cleaning for them. I think Rex and Mimi were each fined a large sum of money by the Court – something like \$8,000 each.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

