

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:

1. The witness statement of Mr Melvin Wong for the Plaintiff;
2. The witness statement of Mr Cyrus Yung for the Plaintiff;
3. The witness statement of Madam Hong Sum-Yee for the 2nd Defendant; and
4. The witness statement of Mr Lau Chi-Chung for the 2nd Defendant.

Witness Statement of Melvin Wong

I, MELVIN WONG, of [Hong Kong address], say as follows:

1. I am a Bank Manager of the Plaintiff Morgan International Bank Limited (the “**Bank**”). I am 50 years of age.
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

Introduction

3. This is my witness statement in support of the Bank’s claim against the 2nd Defendant Madam Hong Sum-Yee (“**Madam Hong**”).
4. I have worked at the Bank for over 25 years. I was appointed a Bank Manager in September 2012.

The Mortgage

5. In around October 2012, I was introduced the 1st Defendant Mr Lau Chi-Chung (“**Mr Lau**”) through a mutual friend. I had just been appointed a Bank Manager responsible for corporate lending. On average we lent around HK\$10,000,000 to HK\$20,000,000 to businesses.
6. Mr Lau asked me if his company, Brilliant Win Limited (“**BWL**”) could borrow some money for working capital. Mr Lau said that he would need up to around HK\$8,000,000 at first, but might need to borrow further amounts later.
7. I informed Mr Lau that since BWL had no solid assets to provide as security, the loan would have to be secured by a mortgage over real property.
8. Mr Lau told me that he was a joint owner of a piece of property (i.e. the property situate at Unit 12B, Oak Tree Mansion, 28 Taikoo Wan Road, Taikoo Shing, Quarry Bay, Hong Kong) (the “**Property**”) with his mother, Madam Hong.
9. After the Bank did its own internal valuations of the Property, I agreed that the Bank could provide the loan requested if Mr Lau and Madam Hong agreed to provide a mortgage over the Property.
10. On 9 November 2012, Mr Lau came to my office at the Bank. I asked him where Madam Hong was and he said she would come later, but we could first discuss the terms of the loan and the Mortgage.

11. In accordance with the Bank's normal procedure, I requested one of the Bank's solicitors, Mr Cyrus Yung of Messrs Leung & Lee, to attend the meeting. Cyrus Yung had assisted me on a few occasions before.
12. Madam Hong subsequently arrived. I remember distinctly asking Cyrus Yung to explain the terms of the Mortgage to her and its effect, which Cyrus Yung in due course proceeded to do.
13. The whole process took at least 20 to 30 minutes. After Cyrus Yung and I were sure that Madam Hong was willing to enter into the Mortgage freely with full knowledge of its consequences, I asked her to sign the Mortgage.
14. I strenuously deny any allegations that I failed to ensure that Madam Hong was not under the undue influence of Mr Lau.

[Please assume that the statement has been dated and signed with a statement of truth.]

Witness Statement of Cyrus Yung

I, Cyrus Yung, of [Hong Kong address] say as follows:

1. I am 35 years of age and was formerly a solicitor at Messrs Leung & Lee (“**L&L**”). I am now an inhouse lawyer at Corporate Manufacturing Limited.
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

Introduction

3. I make this witness statement in support of the Plaintiff Morgan International Bank Limited’s (the “**Bank**”) claim against the 2nd Defendant Madam Hong Sum-Yee (“**Madam Hong**”).

The Mortgage

4. In around 2012, the firm I formerly worked at, L&L, was regularly retained by the Bank to provide legal advice to sureties to ensure that they were not unduly influenced.
5. At the time, I worked in L&L’s corporate department where I was engaged in advising on mergers and acquisitions. However, from time to time I would assist L&L to provide legal advice for the Bank.
6. I recall that Mr Lau arrived at the Bank’s office first, before Madam Hong.
7. Later Madam Hong arrived, and I took her through the terms of the Mortgage.
8. Although I was a corporate lawyer, from university and my training I was aware of my duties to ensure that the surety is not unduly influenced. Therefore I remember clearly explaining to her that by signing the Mortgage, Madam Hong would become one of the mortgagors of the Property and in the event of default in repayment by the borrower (i.e. the 3rd Defendant Brilliant Win Limited), she would face the risk of shouldering the liability of the Mortgage. She might also lose the Property.
9. I made sure that Madam Hong was willing to enter into the mortgage freely and with full knowledge of its consequences.
10. The whole process took approximately 20 to 30 minutes.

[Please assume that the statement has been dated and signed with a statement of truth.]

Witness Statement of Madam Hong Sum-Yee

I, HONG SUM-YEE, of [Hong Kong address], say as follows:

1. I am a full-time homemaker. I am 83 years of age.
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

Introduction

3. This is my witness statement in support of my defence to the Plaintiff Morgan International Bank Limited's (the "**Bank**") claim against me.

My Background and Relationship With My Son

4. I did not go to university. I only studied up to Form 5. I have never worked, and since I married my late husband over 60 years ago, I spent all my time taking care of the household.
5. When my husband was still alive, he took care of all our banking matters. He died 15 years ago, and in his will, he left his share of the property situate at Unit 12B, Oak Tree Mansion, 28 Taikoo Wan Road, Taikoo Shing, Quarry Bay, Hong Kong (the "**Property**") to our only son Lau Chi-Chung (my "**Son**"). My Son is my only child so I have left him my share of the Property in my will as well.
6. Prior to my husband's death, my Son did not have a very close relationship with me or my husband. He spent most of his time working or setting up some side businesses. My Son always tried to ask us to invest in his projects, and we did do so from time to time.
7. After my husband's death, I believe that my Son realised that he did not treasure his time with his parents and decided to spend more time with me. He moved into the Property to take care of me.
8. My Son also volunteered to assist me in my financial matters since he knew that my husband took care of those things before. My husband was quite successful in buying shares in the stock market and we also have a number of properties in Hong Kong.
9. During this time we became very close and I was truly grateful that I have my Son back after so many years. After this incident, I was initially hurt and suspicious of my Son, but I now know that he regrets what he did and has changed.

The Mortgage

10. In around November 2012, my Son suddenly told me that his business was suffering and he really needed my assistance otherwise it would go bust.
11. He told me that if I agreed to mortgage the Property to borrow HK\$2,000,000 from the Bank, his business would have enough money to stay afloat.
12. I was reluctant to agree, but my Son suddenly threatened to move out of the Property, leave me alone and never speak to me again. By this time I was totally reliant on my Son to take care of my affairs. Therefore I felt I had no choice.
13. On the day I signed the Mortgage, I went to the Bank and my Son was already there. As soon as I sat down, the Bank Manager Melvin Wong produced to me a thick document. He said that this was the Mortgage and asked me to sign it.
14. The Mortgage was a document in English and I had no idea what it said. However, my Son told me that I just needed to sign it and so I did.
15. There was another man present and he said some things to me but I forgot what he said.
16. The whole process took no more than 5 to 10 minutes. After signing the Mortgage, I left the Bank. I did not even receive a copy of the Mortgage. My Son stayed to continue discussing with Mr Wong.

The Bank's Claim

17. I only knew of the Bank's claim when I received its demand letter on 30 January 2018.
18. I was shocked to see that the Bank was claiming HK\$7,720,454, and that if it did not get its money, I would have to give up the Property. I always thought that the Mortgage was for HK\$2,000,000.
19. I now understand that the terms of the Mortgage mean that it would cover any amounts borrowed by Brilliant Win Limited. If I had known the effect of this Mortgage I certainly would never have signed the Mortgage.
20. Indeed I truly regret signing the Mortgage.

[Please assume that the statement has been dated and signed with a statement of truth.]

Witness Statement of Lau Chi-Chung

I, LAU CHI-CHUNG, of [Hong Kong address], say as follows:

1. I am the 1st Defendant. I am 45 years of age. I am a vice-president in International Bank of Hong Kong, and the sole director and shareholder of Brilliant Win Limited (“BWL”).
2. Unless otherwise stated, all the facts and matters contained in this witness statement are within my personal knowledge and are true. Where they are not within my personal knowledge, they are based on the sources identified and are true to the best of my information and belief.

Introduction

3. This is my witness statement in support of my mother Hong Sum-Yee’s (my “**Mother**”) defence to the Plaintiff Morgan International Bank Limited’s (the “**Bank**”) claim against my Mother.

My Background and Relationship With My Mother

4. I graduated from the University of Shatin with a Bachelor’s degree majoring in economics and since leaving university I have worked for various banks in Hong Kong.
5. I am also a part-time entrepreneur and have set up various businesses to try to make some extra money. In recent years, the vehicle for my business has been BWL which I set up in 2012.
6. With respect to my relationship with my Mother, I have read the witness statement of my Mother and agree with what she says. I admit that before my father’s death, I was not a very caring son and I put all my focus on myself and my business.
7. However, after my father’s death, I realised that life is short and I needed to spend more time with my Mother. I was and am not married so I was able to move into the Property to take care of my Mother. Eventually I started assisting my Mother in her financial and other affairs. We grew very close.

The Mortgage

8. In around October 2012, BWL started running into financial troubles. I had dedicated all my extra time to running BWL, including countless sleepless nights.
9. BWL was on the cusp of becoming profitable, but it needed HK\$8,000,000 in working capital to get itself past the year-end. Otherwise it would go insolvent.

10. I had run out of options for funding so I decided to ask my Mother for her agreement to mortgage the property (i.e. the property situate at Unit 12B, Oak Tree Mansion, 28 Taikoo Wan Road, Taikoo Shing, Quarry Bay, Hong Kong) (the “**Property**”). I was totally desperate so I told her I only needed HK\$2,000,000 for the business, knowing that she would certainly not agree to the full HK\$8,000,000 amount.
11. When my Mother did not agree, I felt I had no choice but to threaten her that I would move out of the Property and leave her alone.
12. Looking back I am ashamed at what I did. However, at that time, even though I had decided to spend more time to care for my Mother, my main priority was still the success of my business, and my mentality was that I would try to make it succeed at all costs.
13. On the day I took out the loan, I went to the Bank first to meet with the Bank Manager Melvin Wong.
14. Melvin Wong was a friend of a friend and I knew he was desperate to fulfil his client quota so he would assist me with the Mortgage. He told me that it was his Bank’s policy that all mortgages involving a surety would need to be attended by a solicitor. Melvin Wong said he knew a solicitor who was not very familiar with the relevant duties, and who would therefore be suitable for this transaction.
15. In his private office, he told me that he could include a term into the Mortgage so that it would cover not just the HK\$8,000,000 but any subsequent borrowings. I agreed to that.
16. We then went to another office in the Bank. There was another person in that room who was the solicitor.
17. My Mother came in later, and Melvin Wong gave her the Mortgage to sign. My Mother asked me if the terms were alright. I told her they were and asked her to sign.
18. The solicitor said some general things to my Mother but he certainly did not explain the full terms of the Mortgage to her.
19. The whole process took no more than 5 to 10 minutes. After my Mother signed the Mortgage, she left.

The Bank’s Claim

20. I received the Bank’s demand letter on 30 January 2018. I was expecting this since Brilliant Win had fallen behind on its payments. I knew I had no defence to the Bank’s claim so I did not dispute it.

[Please assume that the statement has been dated and signed with a statement of truth.]