



Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

REVISED COPIES ISSUED
State Reporting Bureau
Date: 20 April, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

HELMAN J

No S932 of 2002

ZON FONG LIN and
HSU CHIEN FEN LIN

Plaintiffs

and

SENG GUY WONG and
LEONIE PATRICIA WONG

Defendants

BRISBANE

..DATE 08/04/2004

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: In this proceeding the plaintiffs claim \$400,000 and interest. Originally the claim was made against Mr and Mrs Wong, but the plaintiffs now pursue only Mrs Wong, since Mr Wong is bankrupt. The matter was put down for trial today and Mrs Wong did not appear, so that the plaintiffs proceeded under rule 476 of the Uniform Civil Procedure Rules 1999.

The only witness called was Mr Lin. It has been established through him that a company called G W Timbers Pty Ltd, which is in liquidation and of which the defendants were directors and shareholders, was paid \$400,000 in four instalments. On 15 January 1998 the plaintiffs paid the company \$50,000; on 19 January 1998 \$150,000; on 11 December 1998 \$200,000; and on 14 May 1999 \$100,000. The sum of those amounts is, of course, \$500,000, but relevant to this claim is only \$100,000 of the \$200,000 paid in the first two instalments. In each case the payments were made by the plaintiffs from an account in joint names, except that the payment of the \$150,000 was made by bank cheque purchased by Mr Lin only, and the \$200,000 was paid by Mr Lin only as trustee for the Z F Lin Family Trust.

On 8 December 1997 a loan agreement was entered into between the plaintiffs as lenders and G W Timbers Pty Ltd as borrower. It provided for a loan of \$95,000, or arguably \$100,000, to G W Timbers Pty Ltd. In the circumstances, the discrepancy which appears between clause 1.1 and item 4 of the schedule to the loan agreement is not material to the issues in this proceeding.

Also executed on 8 December 1997 was a deed of guarantee and indemnity. The guarantors were the defendants. The borrower was shown as G W Timbers Pty Ltd and the lenders the plaintiffs. The deed provided in clause 1(f) that the guarantors should be jointly and severally liable. Clause 3 of the deed provided that the guarantors irrevocably and unconditionally guarantee to pay the debt to the lenders in the manner and at the time specified in document referred to in the deed for payment, and, where not specified, upon demand made by the lenders. The word "debt" was defined in clause 1(i) to mean all moneys which the borrower whether directly or indirectly or contingently or otherwise at any time and from time to time was or might become liable either alone or jointly or severally to pay to the lenders on any account whatsoever, and, without limiting the generality of that provision, by reason of any matter or thing whatsoever by which the lenders were or might become in any manner whatsoever creditors of the borrower. The document referred to in the deed was the loan agreement dated 8 December 1997, but the deed was, in its terms, wide enough to apply to the subsequent loans - for loans they were - to G W Timbers Pty Ltd made in December 1998 and May 1999.

1

10

20

30

40

50

60

The payment of \$200,000 in December 1998 was, as I have mentioned, made by Mr Lin as trustee for the Z F Lin Family Trust of which he and Mrs Lin were beneficiaries. The provision of the deed of guarantee which included in the definition of debt any moneys in respect of which the plaintiffs might become in any manner whatsoever creditors of

the borrower was wide enough to include that sum in the sums for which the defendants are liable to the plaintiffs under the deed of guarantee and indemnity.

It is admitted in the defendants' pleading that the \$400,000 has not been repaid, and that demand has been made for it.

Under the loan agreement of December 1997 the \$100,000 was to be repaid by 28 December 2000, and under the agreements reached orally between the plaintiffs and the defendants in connexion with the later payments of \$200,000 and \$100,000 they were to be repaid by 4 May 2001.

Accordingly, I am satisfied that the plaintiffs are entitled to judgment against Mrs Wong for \$400,000 together with any outstanding interest. The interest payable under the loan agreement was 7.4 per cent per annum and the same rate of interest applied to the later loans to G W Timbers Pty Ltd. According to the calculations provided to me the interest payable today is \$98,080.37.

...

HIS HONOUR: There will be judgment for the plaintiffs against the second defendant for \$498,080.37.

I order that the second defendant pay to the plaintiffs their costs of and incidental to the proceeding to be assessed on the indemnity basis.
