

BANK LOSES \$13M CLAIM

The case of *Commonwealth Bank of Australia v. Perrin* has been in the news recently. The bank tried to claim the sum of approximately \$13.5M allegedly owed to it by Mrs Perrin under various guarantees. The Supreme Court, in a judgement very sympathetic to Mrs. Perrin, roundly rejected every aspect of the bank's claim.

Mr and Mrs Perrin made a substantial fortune from the float of the Billabong Clothing Company. They had previously purchased a house on the Gold Coast, which Mr Perrin requested be put in Mrs Perrin's name only, as at that time he was a solicitor and, allegedly, wanted to protect his assets. By 2006, the marriage was somewhat rocky, and Mr Perrin was suffering financial trouble as a result of some bad overseas investments. So far as the bank was concerned, it had made loans to Mr Perrin, and Mrs Perrin had guaranteed them by way of a mortgage over the property. Mr Perrin was made bankrupt, and the bank subsequently sued Mrs Perrin for payment.

Mrs Perrin's first argument was quite simply that her signature had been forged on a Power of Attorney and the mortgage documents. Despite the evidence of two handwriting experts supporting her argument, the bank would not concede that there had been any forgery. Justice Phillip McMurdo found that the signatures on the documents were noticeably different from Mrs Perrin's true signature.

The bank then argued that Mr Perrin had implied authority to act on Mrs Perrin's behalf. In other words, he was acting for the benefit of both of them. The Judge found that that ground suggested that Mrs Perrin would have approved the mortgaging and potential loss of the family home, which was not supported by the evidence.

By now it appears that the bank was beginning to clutch at straws. Its next argument was that Mrs Perrin had ratified the loan agreement by not doing anything to set it aside once she became aware of it. However, once Mrs Perrin became aware of the situation she took legal advice, part of which was to instruct a handwriting expert. The Court held that this argument was against all authority and could not be sustained.

Finally, and it seems becoming even more desperate, the bank tried to claim that under sections 185 and 187 of the *Land Title Act*, Mrs Perrin should still be obliged to pay it something. The judge held that section 185 did not apply as the mortgages were a nullity, and section 187 did not apply in these circumstances. The overall effect of the Judgment was that she was not obliged to pay the CBA anything. Accordingly, she kept her house, and the CBA has a \$13.5M hole in its accounts.

Banks usually insist on guarantors receiving independent legal and financial advice on guarantee documents. In this case, however, it appears that Mr Perrin intercepted the correspondence from the bank, and not only forged his wife's signature, but also that of his brother (who was and still is a practising solicitor). The whole scheme seems to have been a remarkable web of deceit on the part of Mr Perrin to avoid admitting to his wife that, as a result of inappropriate investments, he had lost much of the family's wealth.

We can provide advice before you enter into a guarantee. If you have already done so and find yourself being chased for payment, please contact us to see if there is any way that your liability can be reduced or discharged. While Mrs. Perrin's situation was extreme, there still may be arguments that can be put to the creditor to lessen the effect of it's claim.

Please contact us on 3849 6263 or reception@oneillslawyers.com.au to see how we can help.