

CASE STUDY ON THE NEGLIGENT PREPARATION OF LOAN DOCUMENTS 'UNSIGNED', SEALED AND DELIVERED

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FACTS:

The IP was on Islamic Finance Bank's panel of solicitors and was appointed to prepare the security documents for a RM50 million Islamic Structural Commodity Financing Facility to one ABC Shipbuilding Pte Ltd.

One of the terms and conditions of the financing facility was that the directors of ABC would execute a personal guarantee to secure the repayment of the financing given to ABC. The IP confirmed with the bank that the personal guarantee was to be executed by Mr X, Mr Y and Mr Z who were the directors of ABC. Based on this confirmation, the bank disbursed the facility. The case against the IP arose when ABC subsequently defaulted in the repayment of the facility and the bank failed in their legal proceedings to enforce the personal guarantee. It transpired that the personal guarantee was not duly signed by Mr X and Mr Y; and was therefore invalid and unenforceable against Mr X and Mr Y. There was no issue with Mr Z's signature on the guarantee.

During the legal proceedings to enforce the personal guarantee, the court found that the signatures on the personal guarantees were forged and rejected the IP's evidence that he witnessed Mr X and Mr Y signing the personal guarantee. The trap that tripped the IP in this case was that the partner of the firm signed only as a witness for Mr Z. Unaware of this, the legal associate signed the other 4 copies of the letter of guarantees as a witness to the signature.

DON'T RISK IT!

Preparation of loan documents can be risky business. This is especially so since it is usual practice for banks to secure undertakings from solicitors, These undertakings usually state if any of the loan facility documents are not in order due to the firm's act of negligence, error, mistake or omissions, the firm would be responsible to make good to the bank any loss or damage arising therefrom.

Checklist

If your firm regularly takes on work relating to loans/financing facilities, it is advisable to create a firm's checklist on steps to take when preparing the relevant documents. Once you have drafted the checklist, it is important that you ensure that every step on the checklist is followed and lawyers and staff in your firm are trained to observe this.

Caution

It is imperative that solicitors exercise caution in every step of the preparation of loan documents. In fact, this tip applies to any work taken on by a solicitor in every area of law.

Record

Solicitors should also record down meeting details especially where instructions, terms discussed and negotiations take place. Once you have recorded down details of the meeting, send the same to

your clients to enable them to verify the details. This would help avoid situations of disagreement over meeting details at a later stage.

Review

In addition to that, a solicitor should always check and double check key details in documents and identification documents for discrepancies. It is trite practice to use passports and NRICs as means of verifying identities and to keep a photocopy for your file.

Reinforce

Apart from scenarios involving the preparation of loan documents, the validity of signatures has also been an area of dispute in areas of wills as well. As such, it is prudent to have more than one individual to witness the signatures. Where major loan transactions are involved, you may wish to get another partner/senior lawyer to sit in to witness the signing of the documents.

Supervision

Supervision can help reduce the chances of errors or omissions in the preparation of loan documents. It is a means of catching errors or omissions at an early stage.

When the word “supervision” comes to mind, the next thought is always “Do I have the time for this?” However, as the old saying goes, a little goes a long way. When preparing big assignments such as loan/financing facilities involving large sums of money, it is best to have a senior lawyer to supervise the preparation of such documents and to have him/her witness the signing of the letter of guarantees as well.