

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1401946 B.C. Ltd. v. Vanhome Ventures 2 Holdings Ltd.*,
2026 BCSC 1753

Date: 20260916
Docket: H250853
Registry: Vancouver

Between:

**1401946 B.C. Ltd., Peterson Investment Group Inc., and
Terrapin Mortgage Investment Corp.**

Petitioners

And

**Vanhome Ventures 2 Holdings Ltd., Vanhome Ventures 2 Limited Partnership,
Vanhome Ventures 2 (GP) Ltd., 1131330 B.C. Ltd., Vanhome Properties Inc.,
Canada Chuangjing Real Estate Development Ltd., Vanlive Holding Ltd.,
1128072 B.C. Ltd., Vangood Group Holding Inc., 1122720 B.C. Ltd., Hua Di Guo
also know as Huadi Guo, Hai Peng Yang also known as Haipeng Yang Suli
Lou, Xiaomeng Ju also known as Xiao Meng Ju, and All Tenants or Occupiers
of the Subject Land and Premises**

Respondents

Corrected Judgment: The text of the judgment was corrected at paragraph 63 and
the cover page on September 18, 2026.

Before: The Honourable Madam Justice Wilkinson

Reasons for Judgment

In Chambers

Counsel for the Petitioners: S. Stephens

Counsel for the Respondents 1128072 B.C.
Ltd. and Suli Lou: J. Scouten

Counsel for the Respondents Canada
Chuangjing Real Estate Development Ltd.
and Xiaomeng Ju: W. Zhang
H. Ross

Place and Date of Hearing: Vancouver, B.C.
June 25 and July 27, 2026

Place and Date of Judgment: Vancouver, B.C.
September 16, 2026

[1] These are my reasons for judgment on the petitioners' application for judgment against the remaining guarantors in this foreclosure proceeding, Suli Lou and 1128072 B.C. Ltd. ("112").

[2] For the reasons below, I grant the application.

Background

[3] This is a foreclosure proceeding. Order nisi was obtained in October 2025. At that time, judgments were adjourned against four guarantors, Ms. Lou, 112, Xiaomeng Ju also known as Xiao Meng Ju ("Ms. Ju"), and Canada Chuangjing Real Estate Development Ltd. ("Development Ltd."). The petitioners have reached a settlement agreement with Ms. Ju and Development Ltd.

[4] The petitioners, as lenders, entered into a Commitment Letter dated May 17, 2023 with Vanhome Ventures 2 Holdings Ltd. ("Vanhome GP") and Vanhome Ventures 2 Limited Partnership ("Vanhome LP") (together, the "Borrowers"), as borrowers, Ms. Lou, 112 Ltd., Ms. Ju, Development Ltd., Vanhome Ventures 2 (GP) Ltd., 1131330 B.C. Ltd., 1122720 B.C. Ltd., Vanhome Properties Inc., Vanlive Holding Ltd., Vangood Group Holding Inc., Hua Di Guo and Hai Peng Yang, as guarantors (collectively, the "Guarantors").

[5] The Commitment Letter provides for joint and several guarantees from the Guarantors under "Security". Development Ltd. is one of the limited partners of the respondent Vanhome Ventures 2 Limited Partnership (the "Limited Partnership"), originally holding a 5% interest and, since 2020, holding a 2% interest in the Limited Partnership. The Limited Partnership was engaged in a real estate development project (the "Project").

[6] Pursuant to the terms of the Commitment Letter, the petitioners advanced a loan in the principal amount of \$15,000,000 to the Borrowers. The obligations of the Borrowers and Guarantors under the Commitment Letter are secured and supplemented by, inter alia:

- a) A mortgage charging two vacant development properties in Coquitlam;
- b) A general security agreement charging all of the Borrowers' present and after acquired personal property; and
- c) A guarantee and postponement executed by each of the Guarantors, including Ms. Lou and 112 Ltd. (the "Guarantee and Postponement").

[7] The sole director of 112 is Hong Zhang ("Mr. Zhang"), who is the husband of Ms. Lou. Mr. Zhang and Ms. Lou are both originally from China and immigrated from China to Canada in 2013 with their children. Mr. Zhang deposes his ability to understand spoken or written English is very limited. Ms. Lou deposes her understanding is very rudimentary. Their native language is Mandarin.

[8] Ms. Lou attests that from time to time after November 2017 in Canada she signed various documents related to the project when asked. She cannot recall what they were but they were all written in English. She could not read them and when she signed them she relied entirely upon the explanations of "others" provided to her regarding what they said and why they were needed.

[9] The Guarantee and Postponement was signed by Ms. Lou on May 24, 2023 and by Mr. Zhang on behalf of 112 on June 1, 2023.

[10] The Guarantee and Postponement is written in English. The first sentence of the document states, "[The guarantors] hereby guarantee payment to [the lenders] of all debts and liabilities (collectively, the "Liabilities"), present and future, direct or indirect, absolute or contingent, matured or not at any time owing by [the Borrowers] or either of them".

[11] The Borrowers and Guarantors fell into default of their obligations to the petitioners under the Commitment Letter and the Security.

[12] This proceeding was commenced on August 25, 2025. Ms. Ju and Development Ltd. filed a response and supporting affidavit raising a non est factum defence. Just prior to the hearing of the petition, Ms. Lou and 112 Ltd. advised

through counsel that they would be raising the same form of defence as asserted by Ms. Ju and Development Ltd. The petitioner agreed to adjourn the relief sought as against these four Guarantors.

[13] Order nisi was granted on October 30, 2025. \$16,378,521.51 was declared to be the amount due and owing to the petitioners as of that date. Judgment was granted against all other Borrowers and Guarantors in the same amount.

[14] The petitioner has since reached a settlement agreement with Ms. Ju and Development Ltd.

[15] The respondents submit that the matter is not suitable for summary determination and should be converted to an action and referred to the trial list.

Execution of the guarantee by Ms. Lou

[16] Ms. Lou deposes as follows:

- a) By 2023, before learning of a proposed loan refinancing with the Petitioners, Ms. Lou had grown frustrated and impatient with the slow progress of the Project. She was concerned about spending large amounts of money without any concrete results and no longer wanted her family to remain involved in the project.
- b) In or about mid-May of 2023, Hai Peng Yang ("Mr. Yang") - the architect and chief representative of the Limited Partnership called Ms. Lou about the loan and the need for her signature on documents related to that loan.
- c) Ms. Lou told Mr. Yang that she was not prepared to sign any documents related to the new proposed loan. She understood from him that if she did not sign the documents, the Project would not obtain the loan it was seeking and would collapse. Ms. Yang told Mr. Yang that she still refused to sign any documents related to the proposed new loan.

- d) Over the following days, Mr. Yang and his wife, Jin Tao pressed Ms. Lou repeatedly to sign the documents related to the proposed loan, telling her that she was the last person to sign them. Mr. Yang and Ms. Tao told Ms. Lou that there was no risk to the investors associated with the loan since the project was worth more than the amount of the loan and that, if she did sign the documents, she would at most be responsible for 5% of the debt corresponding to the 5% interest that 112 originally held in the Limited Partnership.
- e) Due to the pressure from Mr. Yang and Ms. Tao, Ms. Lou agreed to sign the documents related to the proposed loan.
- f) Based on instruction provided by Mr. Yang on May 23, 2023, Ms. Lou understood she needed to go to the office of Collingwood Law in Richmond the next day to sign documents related to the proposed loan.
- g) On May 24, 2023, Ms. Lou drove to that office where she and Mr. Yang together met with Andrew Xu, a lawyer at the law firm. The meeting lasted about 10 minutes. Mr. Xu went through the documents which he provided, one-by-one, directing Ms. Lou to the places on the pages where she had to sign. He did not explain what the documents were or what they meant.
- h) While she had a vague understanding that the documents that she signed at Mr. Xu's office included a document that could, in theory make her responsible for up to 5% of the amount of the loan (as Mr. Yang and Ms. Tao had told her), Mr. Xu did not provide any explanation to her during their meeting of what the guarantee was or what her obligations under it were.
- i) Mr. Xu did not inform her during their meeting that she could potentially be personally liable under the documents she was signing for a large sum or any amount of money, if the loan Mr. Yang had arranged was not repaid.

- j) At no time during their meeting did Mr. Xu advise Ms. Lou to seek or obtain independent legal advice before signing the documents that she signed in front of him.
- k) Ms. Lou was not given copies of the documents that she signed at the end of her meeting with Mr. Xu, nor have copies of those documents ever been sent to her since apart from in these proceedings.

[17] In addition to the Commitment Letter and Guarantee and Postponement, as part of the loan transaction Ms. Lou signed other instruments written in English, including a separate assignment and postponement and a letter of undertaking.

[18] Mr. Xu acted for the Borrowers and Guarantors on the loan transaction (other than Ms. Ju, who had her own lawyer, Mr. Chen). Mr. Xu is not in-house counsel and is independent from the petitioners.

[19] Ms. Lou does not assert that anyone or anything prevented her from obtaining copies of the subject loan documents and taking them to a lawyer of her choosing or to anyone else for translation.

[20] In 2017, in addition to a mortgage and assignment of rents that Ms. Lou signed as covenantor in favour of her holding company Pacifica, Ms. Lou also executed a mortgage written in English charging a property on Comstock Road, Richmond, BC in favour of the Canadian Imperial Bank of Commerce in 2013, a mortgage written in English charging a property on 3071 Chatham Street, Richmond, BC in favour of The Toronto-Dominion Bank in 2017, and a mortgage and assignment of rents written in English charging the subject lands in favour of Pacifica in 2022.

[21] Mr. Xu witnessed Ms. Lou's signature on the mortgages in favour of Pacifica.

Execution of the guarantee by 112

[22] Mr. Zhang deposes the circumstances under which he came to execute the guarantee for 112 were as follows:

- a) Mr. Zhang was in China when the loan financing with the Petitioners was arranged by Mr. Yang. He was not personally involved in the discussions or negotiations that led up to the agreement reached with the Petitioners to provide that loan, and only learned about it indirectly from Mr. Yang, who happened to be in China at the same time he was.
- b) He understood from a conversation with Mr. Yang in a meeting between them on May 29, 2023, that there were no additional risks involved in signing the guarantees required in connection with the loan financing, and that the guarantors would only be liable under their guarantees for a portion of the debt that corresponded to the percentage interest that they held in the limited partnership.
- c) He also understood from Mr. Yang that Jessie Wen, who was a vice president of Gentai Financial Services Corporation ("Gentai"), had told Mr. Yang that the guarantees involved in the refinancing would not impose any additional financial risks or burdens on the limited partners in the project.
- d) On May 30, 2023 (early in the morning of May 31, Beijing time), ten documents related to the proposed loan financing, including the guarantee to be signed by 112, were emailed to Mr. Zhang in China by a legal assistant at Collingwood Law who advised that Andrew Xu of that firm would arrange a videoconference between them for execution of the documents.
- e) On June 1, 2023 (Beijing time), Mr. Zhang had a video conference meeting with Mr. Xu during which Mr. Zhang signed the documents. Mr. Zhang has deposed that, in that meeting, Mr. Xu did not explain to him in any detail what the documents were or what they meant, but rather just went through them one-by-one telling Mr. Zhang where to sign each of them.

- f) During their meeting, Mr. Xu did not recommend or suggest to Mr. Zhang that he obtain independent legal advice regarding the documents that he was signing for 112.

Events after the execution by Ms. Lou and 112

[23] On June 2, 2023, Mr. Zhang emailed copies of the loan documents that he had signed back to Collingwood Law.

[24] Also on June 2, 2023, Mr. Yang forwarded to Mr. Zhang, by WeChat, a series of WeChat messages that Mr. Yang had exchanged previously with Michael Lu. Mr. Lu was one of the other members of the management team for the Project. That series of messages included a screenshot of what, on its face, appeared to be a WeChat message that Mr. Yang had received from "Jessie", whom Mr. Zhang understood to be Jessie Wen of Gentai, regarding the execution of the loan documents by another guarantor, Xiao Meng Ju. In that message, the person identified as "Jessie" stated (in Chinese) that the signing of the guarantee would not impose additional risks on the limited partners. Ms. Wen is no longer employed with Gentai.

[25] Even if I accept the reliability and admissibility of the WeChat messages evidence, from those messages between Ms. Ju and Mr. Lu, it is evident that they were discussing an agreement among the equity holders, separate from the loan documents, that would limit the liability of the Guarantors, as between each other, to their proportionate interest in Vanhome LP. In addition to the messages Mr. Lu sent a message to Ms. Ju stating, "Let me confirm with you again - I mean, I need to talk to uh, our lawyer, that is, we need to sign a supplementary agreement. With respect to this agreement, it needs to clarify that when each shareholder provides their guarantee, even if the guarantee is given, the guarantee responsibility is limited to their shareholding percentage. The guarantee is provided based on the shareholding ratio. Uh, there should be such a resolution in the company regarding this, right?"

[26] There is no allegation that the petitioners had any communications with Ms. Lou or Mr. Zhang on behalf of 112.

Analysis

[27] The respondents assert that the evidence supports a finding that there may be a triable issue with regard to their *non est factum* defence, and as such the matter ought to be referred to the trial list.

[28] To raise the defence of *non est factum*, they submit, it is unnecessary for the executed document to be of an entirely different character than what it was understood to be. The defence of *non est factum* remains available in circumstances where the mistake pertains to the contents of the executed document. Thus, a mistake as to whether one's liability under a guarantee is limited will suffice.

[29] They submit Ms. Lou was pressured to sign the Guarantee by her business partners and that she only agreed to sign based on their assurances that her liability under the Guarantee would be limited. They argue the petitioners ought to have insisted that Ms. Lou receive independent legal advice.

[30] While neither Ms. Lou nor Mr. Zhang depose that Ms. Lou had any role in whether Mr. Zhang signed on behalf of 112, the focus of the respondents' submissions were on Ms. Lou's evidence and position.

Suitability for summary determination and test to convert the petition into an action

[31] The overarching object of the *Rules* is the just, speedy and inexpensive determination of a proceeding on its merits. Accordingly, the court ought to strive to resolve matters summarily whenever possible: *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 1, 4-5, 21, 23-25, and 28.

[32] Prior to the decision in *Cepuran v. Carlton*, 2022 BCCA 76, the court would convert a foreclosure proceeding into an action in circumstances where a *bona fide* triable issue arose. A *bona fide* triable defence arises only in circumstances where the court is unable to resolve the issue by reference to the affidavits and documentary evidence and the issue would change the outcome. While the onus was and remains on the petitioner, the person alleging a *bona fide* defence is

required to establish an evidentiary foundation for the defence. Bald assertions are insufficient: *Freshwest Equities Trading Corp. v. Dosanjh*, 2015 BCSC 952 at paras 16 and 37; and *Boffa Developments (Jewel 2) Ltd v. Pinnacle International (Wilson) Plaza Inc.*, 2009 BCSC 1701.

[33] In *Cepuran*, the Court of Appeal held that the mere existence of a triable issue no longer constitutes good reason to refer a petition proceeding to the trial list:

[158] It should be kept in mind that the starting point for those matters that are properly brought by way of petition is that the Rules contemplate that a summary procedure will be appropriate: *Conseil scolaire* at paras. 29-30. This is different than the starting point for an action. There should be good reason for dispensing with a petition's summary procedure in favour of an action. The mere fact that there is a triable issue is no longer a good reason.

[34] The court should strive to resolve factual disputes by reference to the evidence. Disputed questions of fact or law do not justify converting a statutorily mandated summary procedure into an action. Even prior to *Cepuran*, the court regularly decided complex factual and legal disputes in petition proceedings. In circumstances where that is not possible, hybrid procedures, such as cross-examination, may be ordered. See *Whistler Service Park Ltd., v. Glacier Creek Development Corp.*, 2005 CarswellBC 2227 at para 34 aff'd 2005 BCCA 472; *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69; *Icahn Partners LP v. Lions Gate Entertainment Corp.*, 2011 BCCA 228; *Casey v. CopperLeaf Technologies Inc.*, [2010] B.C.J. No. 566 (S.C.); *Jaguar Financial Corp. v. Alternative Earth Resources Inc.*, [2016] B.C.J. No. 908 (C.A.); and *Southpaw Credit Opportunity Master Fund LP v. Asian Coast Development (Canada) Ltd.*, [2013] B.C.J. No. 214 (S.C.).

[35] I have evidentiary concerns with regard to the WeChat message evidence adduced by Mr. Zhang. This evidence is submitted by way of double hearsay. Double hearsay should never be admitted: *Le Soleil Restaurant Inc. et al v. Nomani et al*, 2005 BCSC 1804 at para. 47. I accept that there may be exceptions to such a principle.

[36] Neither Ms. Lou nor Mr. Zhang allege that their will was somehow vitiated as a result of the pressure nor, relatedly, do they seek to avoid the Guarantee based on

the doctrine of undue influence. The respondents submit this nugget of evidence may raise the possibility that an agent of the petitioners participated in misleading the respondents into a misunderstanding of what the terms of the guarantee really were.

[37] In Mr. Zhang's affidavit, he discusses what Jessie Wen allegedly told Mr. Yang, who then told Mr. Zhang, about the risks or financial burdens for the Guarantors. Mr. Zhang was not personally part of the discussions between Jessie Wen and Mr. Yang and has no personal knowledge of what Jessie Wen said to Mr. Yang. The statements are not made on Mr. Zhang's own personal knowledge and cannot be tested through cross-examination of Mr. Zhang. The statements constitute double hearsay. Further, they are not with regard to Mr. Zhang or Ms. Lou's signing of the documents. They relate to another guarantor who ended up signing later. Mr. Zhang deposes he received the documents after he signed.

[38] With respect to another WeChat message, it was not sent to Mr. Zhang, and Mr. Zhang is unable to state for certain whether the message came from Jessie Wen of Gentai. Mr. Zhang has no personal knowledge of the authenticity, author, or contents of this message. The exhibit fails to meet the foundational requirements for admissibility: it is unauthenticated, its purported author has not been identified with certainty, and the contents constitute hearsay if adduced for their truth.

[39] Even if I admitted the messages into evidence, I do not find that they assist the respondents.

[40] The question for the court on this application is whether Ms. Lou or 112 have raised an issue that would change the outcome and which cannot be resolved by reference to the affidavits and documentary evidence. No such bona fide issue arises on the evidence.

[41] The doctrine of *non est factum* is "a narrow and exceptional defence, intended to protect individuals who, due to factors beyond their control (for example: blindness, illiteracy, or a language barrier), sign a document fundamentally different

in character from what they believed it to be." There is a heavy burden of proof on the person seeking to invoke the doctrine.

[42] The relevant considerations were summarized in *Farrell Estates Ltd. v. Win-up Restaurant Ltd.*, 2010 BCSC 1752:

[100] The principles of *non est factum*, as formulated in the weight of the authorities, can be summarized as follows:

1. The burden of proving *non est factum* rests with the party seeking to disown their signature. For a person of full capacity the application of the doctrine must be kept within narrowly prescribed limits.
2. The person who seeks to invoke the remedy must show that the document signed is fundamentally different from what the person believed he or she was signing.
3. Even if the person shows such a fundamental difference, the court must examine whether the signer was careless in failing to take reasonable precautions in the execution of the document. The court must also consider the conduct of the party relying on the document and whether they qualify as an innocent party, in order to determine which party, by application of reasonable care, was in the better position to avoid the loss.

[Emphasis added.]

[43] A "fundamentally different" document is one that is radically different in kind from the one the person thought they were signing: *Liberty Mortgage Services Ltd v. Shaw*, 2024 ABKB 92 at para 75.

[44] Ms. Lou and Mr. Zhang admit knowing that they were signing a document that would render them (in Mr. Zhang's case, 112) liable to pay some part of the loan. However, based on representations from their own partners (i.e., representatives of Vanhome LP), they allege that they understood the guarantee of payment would be limited in proportion to their respective equity positions.

[45] An alleged mistaken understanding as to the scope of a guarantee, as opposed to whether a guarantee was signed at all, was addressed by this court in *GFS British Columbia Inc. v. Olive U Foods Ltd.*, 2014 BCSC 113. In that decision, the plaintiff applied for summary judgment against a personal defendant under *Rule* 9-6 in connection with his liability under an indemnity agreement. In opposing the

application, the personal defendant relied on a lack of legal advice and the defence of non est factum. In respect of the latter, the defendant's position was that he understood the indemnity to be limited, not unlimited.

[46] The court granted judgment in favour of the plaintiff. The *non est factum* defence was rejected on the basis that a limitation of scope or amount of liability does not fundamentally change an agreement, and, in addition, the failure to understand the document resulted from carelessness:

25 There is no claim that Mr. Mollica is less than a person of full capacity. Mr. Mollica also admits that he knew he was signing an indemnity agreement with regards to Olive U's debt to GFS. He claims, however, that he thought that the guarantee was only for debts up to the date he signed, and would not include debts subsequently incurred by Olive U. Even if this claim is assumed to be true, it does not make the document Mr. Mollica signed fundamentally different than what he believed it to be. The difference is merely the scope or amount of money owing.

[47] In the present case, Ms. Lou and Mr. Zhang have affirmed that they understood they were signing documents under which they guaranteed payment to the petitioners. The instrument they signed was of the precise nature they understood they were signing - taking their evidence at the very highest, the signatories only misunderstood the scope or amount of liability thereunder. I accept, however, that the value of their equity positions in the partnership were vastly less than the possible liability under the Guarantee.

[48] However, a party may not invoke the doctrine *non est factum* in circumstances where they had the opportunity to understand the document but failed to take reasonable steps to do so. "Mistake as to the nature of the transaction... must arise from some deceit which ordinary diligence could not penetrate, or some mischance which ordinary diligence could not avert: *Marvco Colour Research Ltd. v. Harris*, [1982] 2 S.C.R. 774, at p. 781. The defence will be unavailable if the defendant could have, but failed, to read or make reasonable inquiry in order to ascertain the nature of the document prior to signing.

[49] The principle remains applicable today, as set out in *Equitable Bank v. Bal*, 2025 ONSC 7130:

[15] The Supreme Court of Canada made it clear more than 40 years ago that a person who executes a document without taking the trouble to read it is liable on it and cannot plead that they mistook its content: see *Marvco Colour Research Ltd v. Harris...*

[50] The foregoing principles are not only intended to place the loss on the person who could have avoided it, but also to recognize the need for certainty and security in commerce: *Marvco* at pp. 781 and 786; *RBC v. Precision Markings Inc.*, 2025 ONSC 169 at paras 33 and 34 [*Precision Markings*].

[51] With respect to the respondents' submissions about the fact that the petitioners did not advise them to seek independent legal advice, this is not a situation where the guarantors are merely spouses of the principal of a corporation (i.e., an "accommodation party"). They are equity stakeholders in the borrower. They directly benefitted from the loan. As held in *Precision Markings*:

[37] When a party signing documents is a - shareholder, officer, or former president of the borrower - then his failure to read the document(s) is beyond mere carelessness, it is indeed – indifference.

[emphasis in the original].

[52] In the present case, neither Ms. Lou nor Mr. Zhang deny that they are persons of full capacity. Mr. Zhang and Ms. Lou are educated and have made significant monetary investments in the Project, and fully understood the concept of a loan and a non-borrower guaranteeing repayment of the loan to the lender.

[53] Mr. Zhang and Ms. Lou attest that they can read some English. The first sentence states in English that they would be guaranteeing payment "of all debts and liabilities" of the Borrowers.

[54] It appears that Mr. Xu acted for Ms. Lou with respect to a prior loan from Pacifica, and Mr. Zhang attests that during his meeting with Mr. Xu, he was under the impression that Mr. Xu was acting for 112 Ltd. To the extent Ms. Lou and Mr.

Zhang did not receive legal advice from Mr. Xu, or that the advice they received was negligent, they will be entitled to recover any losses from Mr. Xu.

[55] Even if it is believed that neither Mr. Xu nor Mr. Chen explained the legal import of the Guarantee and Postponement to Ms. Lou or Mr. Zhang, they would nonetheless be "careless guarantors" for having failed to ask for the explanation. As held in *Bank of Montreal v. Sidhu*, [1997] B.C.J. No. 1664 (S.C.):

26 In addition to the above reasonable inference, there is the evidence that Mrs. Sidhu was sent out by the plaintiff to receive independent legal advice. She deposed that the independent legal advice was insufficient in that Mr. Grewal gave her no explanation of the documents whatsoever. I find it difficult to believe that any member of the bar would have Mrs. Sidhu simply sign the documents without advising her at all....

27 Even if I were to accept Mrs. Sidhu's evidence it is clear that she was afforded the opportunity to obtain independent legal advice and chose not to ask for an explanation of what she was signing. This omission places her in the category of the "careless guarantor" who, if she has failed to understand what she has signed, has done so because of her own negligence. (*Bank of Montreal v. Sorch*, [1991] B.C.J. No. 937 (B.C.S.C.)).

[56] In any event, Ms. Lou admits in her affidavit that she regularly signed various documents related to the Project based on what she was told about them by others and absent any independent verification. That is what she says occurred when she signed the Guarantee and Postponement. The law cannot and does not permit individuals to avoid their contractual obligations through the serial avoidance of any effort to independently understand the legal documents they are signing.

[57] Nothing prevented Ms. Lou or Mr. Zhang from asking Mr. Xu to explain it, going to another lawyer, or having the instrument translated. Their conduct is precisely the type of carelessness discussed in *Farm Credit* and which does not justify avoidance of contractual obligations.

[58] The respondents submit that their alleged reliance upon the misrepresentation of the limited guarantee supports their defence of non est factum, citing *Farrell Estates Ltd. v. Win-Up Restaurant Ltd.*, 2010 BCSC 1752. For one's contractual counterparty to properly bear a loss, that party must have actual

knowledge or reason to suspect that the contract was executed under a misapprehension. As held in *Farrell Estates*:

[91] As in *Marvco*, in *Petelin v. Cullen* (1975), 132 C.L.R. 355, [1975] HCA 24 at 359, the High Court of Australia identified the two policy objectives of *non est factum* that "pull in opposite directions."

[92] With reference to the obligation of a signer to take reasonable precautions in ascertaining the character of the document before signing it, the High Court stated at 360:

The insistence that such precautions should be taken as a condition of making out the defence is of fundamental importance when the defence is asserted against an innocent person, whether a third party to the transaction or not, who relies on the document and the signature which it bears and who is unaware of the circumstances in which it came to be executed. It is otherwise when the defence is asserted against the other party to the transaction who is aware of the circumstances in which it came to be executed and who knows ... or has reason to suspect that it was executed under some misapprehension as to its character. In such a case the law must give effect to the policy which requires that a person should not be held to a bargain to which he has not brought a consenting mind for there is no conflicting or countervailing consideration to be accommodated -- no innocent person has placed reliance on the signature without reason to doubt its validity.

[59] In *Farrell Estates*, the party seeking to avoid their guarantee, Ms. Yang, had firmly maintained she would not provide a guarantee. This was directly communicated by Ms. Yang to the contractual counterparty, *Farrell Estates*, on no less than five occasions. Notwithstanding actual knowledge of Ms. Yang's position, *Farrell Estates* tasked the individual who stood to be relieved of dire financial consequences if Ms. Yang signed the guarantee with the job of obtaining her signature. *Farrell Estates* then made no inquiries of Ms. Yang after her position apparently changed without explanation.

[60] On the facts before me, Ms. Lou and Mr. Zhang could have, but did not, communicate their reluctance to sign a guarantee directly to the petitioners. They could have, but did not, confirm with the petitioners that their liability under the Guarantee would indeed be limited in the manner represented.

[61] Unlike the facts in *Farrell Estates*, there is no evidence that the petitioners had knowledge of Ms. Lou and Mr. Zhang's alleged reluctance to sign the Guarantee. There is also no evidence that the petitioners had knowledge of the alleged misrepresentation to them regarding the terms of the Guarantee.

Conclusion

[62] I find that the matter is suitable for summary determination.

[63] The petitioners are granted judgment against Ms. Lou and 112 Ltd.

Costs

[64] The petitioners seek costs on an indemnity basis pursuant to the terms of the security. Costs were awarded in favour of the petitioners on an indemnity basis against the Borrowers and other Guarantors under the order nisi made herein.

[65] The matter of costs was not fully spoken to due to a shortage of time. However, I note the following.

[66] Under the Guarantee and Postponement, the Guarantors guaranteed payment to the petitioners of all debts and liabilities of the Borrowers. The Borrowers, in turn, are liable to pay the petitioners' costs on a solicitor and own client basis pursuant to the terms of the Commitment Letter, the mortgage and the general security agreement.

[67] Under s. 20 of the *Law and Equity Act*, RSBC 1996, c 253 the court "may" order costs as party and party costs despite a covenant or term of a mortgage to the contrary. Section 20 states as follows:

20(1) In this section:

"foreclosure", in respect of an agreement for sale, as defined in section 16 (1), means a foreclosure as defined in that section;

"mortgage" includes an agreement for sale as defined in section 16 (1).

(2) In a foreclosure in which costs are awarded, the court may,

- (a) despite any covenant or term of a mortgage respecting the payment and calculation or manner of determining costs and expenses in, arising out of, or in connection with a foreclosure, and
- (b) instead of making an order in accordance with that covenant or term, order that costs be assessed as party and party costs or as special costs under the Supreme Court Civil Rules, and the court may make no order for costs if it would otherwise make no order but for the covenant or term referred to in this subsection.

(3) This section applies to all proceedings commenced before April 14, 1986 other than a proceeding in which a court has made an order for costs.

[Emphasis added]

[68] The legislature referred to a term or covenant of a mortgage in s. 20 of the *Law and Equity Act*. The legislature could have, but did not, refer to a term or covenant of a loan agreement or the other forms of non-mortgage security commonly granted in favour of commercial lenders.

[69] In *Blueshore Financial v. 1134038 B.C. Ltd.*, 2023 BCSC 2304, this court set out certain considerations that would likely guide the exercise of its discretion under s. 20 of the *Law and Equity Act*:

- a) The mortgage term agreed to by the parties provides for such costs which, but for s. 20 of the *Law and Equity Act*, the mortgagee would be awarded;
- b) The sophistication of the parties and involvement of legal counsel in the preparation and execution of the lending documents;
- c) Whether the matter is a commercial matter where the use of the lender's funds was intended to generate an opportunity to profit or earn income;
- d) Whether, although being brought as a foreclosure under R. 21-7, other agreements are being enforced as part of the proceeding (e.g., personal property security and guarantees) that include indemnity cost provisions;
- e) Whether there have been delays in prosecuting the matter such that the mortgagor had extended use of the borrowed funds post default; and

- f) The overall complexity of the proceedings including the number of parties, and extent of the security and collateral.

[70] Further, the Court of Appeal recently considered contractual costs provisions in *Peace River Partnership v. Cardero Coal Ltd.*, 2023 BCCA 351. After discussing contractual costs provisions generally, the Court of Appeal held as follows:

[148] Thus, where a contractual indemnity provision meets the threshold test of "clearly and unequivocally" establishing the right to indemnification (*Eisler Estate (SC)* at para. 31), that provision will, in our view, be presumptively enforceable. The burden then shifts to the party opposing indemnification to establish why the court should exercise its discretion to depart from the terms of the contract.

[71] As I noted above, I have not heard oral submissions from the parties regarding the matter of costs.

[72] If the parties cannot agree on the matter of costs, they are invited to contact scheduling within 30 days to arrange a 30-minute hearing on the matter of costs.

"Wilkinson J."