

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lloyd Investments Ltd. v. Wang*,  
2023 BCSC 303

Date: 20230302  
Docket: S204229  
Registry: Vancouver

Between:

**Lloyd Investments Ltd.**

Plaintiff

And:

**Chunhong Wang**

Defendant

Before: The Honourable Madam Justice Wedge

## Reasons for Judgment

Counsel for the Plaintiff:

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Place and Date of Trial:

Vancouver, B.C.  
December 5-9, 12-13, 2022

Place and Date of Judgment:

Vancouver, B.C.  
March 2, 2023

**I. OVERVIEW OF THE ACTION**

[1] The plaintiff, Lloyd Investments Ltd. (“Lloyds”) holds a mortgage in its favour that is registered on title to a residential property in Vancouver (the “Property”) in second priority position (the “Lloyd Mortgage”). The defendant, Chunhong Wang (“Ms. Wang”) is the registered owner of the property.

[2] The central issue is the validity of a power of attorney granted by Ms. Wang to her son, Zenhao Sun (“Mr. Sun”) and which was used to enter into the Lloyd Mortgage (the “POA”). Ms. Wang does not dispute that her son entered into the Lloyd Mortgage and, through the use of the POA, executed all of the documents necessary to register a valid mortgage against the Property. Nor does she dispute that a signature on the POA as the grantor appears to bear a remarkable resemblance to her signature. However, Ms. Wang asserts that the POA was forged and therefore invalid such that Mr. Sun was not authorized to enter into the Lloyd Mortgage on her behalf or arrange for its registration.

[3] Ms. Wang defaulted on the Lloyd Mortgage, and Lloyds commenced a foreclosure proceeding on May 14, 2019. In this action, Lloyds seeks an Order Nisi on the standard terms, with a shortened redemption period of one day.

[4] In response, Ms. Wang asserts that the Lloyd Mortgage is invalid because the POA used by Mr. Sun to enter into the mortgage was obtained by fraud, and argues that the mortgage ought to be removed from title to the Property.

**II. FACTS**

[5] On July 25, 2012, Ms. Wang, who is a Chinese citizen, purchased the Property located at 3355 West 22nd Avenue in Vancouver. In late September 2012, the Bank of Montreal (“BMO”) placed a mortgage on the Property in first position in the amount of \$829,500.00 (the “BMO Mortgage”). Ms. Wang does not dispute the validity of that mortgage.

[6] Ms. Wang purchased the Property as a home for her use, and that of her son, while Mr. Sun was attending high school in Vancouver, and later University, from

2012 to 2019. Ms. Wang continued to live primarily with her husband in China, but made frequent trips to Vancouver to be with Mr. Sun. She initially spent several months at a time in Vancouver while her son was in high school, then several weeks at a time once Mr. Sun was in University.

**A. The Second Mortgages**

[7] Between 2017 and 2018, three different second priority mortgages were registered on the Property, all naming Ms. Wang as the borrower (the “Second Mortgages”). The Lloyd Mortgage is the third of the Second Mortgages. Ms. Wang denies entering into any of the Second Mortgages, claiming they are all fraudulent and must have been obtained by her son, Mr. Sun, or by persons unknown, without her knowledge or permission.

[8] The first of the Second Mortgages was registered on May 15, 2017, in favour of Morning Capital Inc., securing a loan of \$830,000.00 to Ms. Wang as the borrower (the “Morning Capital Mortgage”). The POA was not used to obtain the Morning Capital Mortgage. Lloyds alleges that Ms. Wang herself entered knowingly into this mortgage, and that she executed all documents in person necessary to register the mortgage while in Vancouver. Ms. Wang’s response is that she did not enter into the mortgage. She claims that she was in China at the time the mortgage was executed, and that it must have been fraudulently obtained by an unknown individual, perhaps by someone who looked like her.

[9] Lloyds called two witnesses who testified that they acted on behalf of Ms. Wang in respect of the Morning Capital Mortgage, and that they met with her in person in Vancouver to execute the necessary documents. I will discuss this evidence in due course.

[10] It is not disputed that approximately six months later, on November 16, 2017 Mr. Sun signed the impugned POA which was registered two weeks later in the New Westminster Land Title Office. On its face, the POA also bears the signature of Ms. Wang as the person granting the POA, and is a valid instrument as registered.

[11] Ms. Wang asserts that the POA was forged by Mr. Sun and is therefore invalid. She testified that while the signature on the POA appears to be identical to hers, in fact it is not her signature

[12] The second of the Second Mortgages, registered on November 28, 2017, was in favour of Amber Mortgage Investment Corp., securing a loan of \$1,130,000 to Ms. Wang as the borrower (the “Amber Mortgage”). This mortgage was entered into through the use of the POA.

[13] The proceeds of the Amber Mortgage were disbursed to the benefit of Ms. Wang, as follows:

- (a) To pay out and discharge the Morning Capital Mortgage in the amount of \$837,029.04;
- (b) To pay property taxes for the Property in the amount of \$5,296.60; and
- (c) To pay the balance of the proceeds in the amount of \$252,238.58 to Ms. Wang, made payable to her by way of a cheque in that amount, which was deposited into Ms. Wang’s TD Canada Trust account (the “Wang TD Account”).

[14] The fact of the deposit is not disputed, but Ms. Wang denies any knowledge of the deposit into her TD Account and cannot explain how the deposit occurred despite the fact that only she had authority over the account at that time.

[15] The third of the Second Mortgages is the mortgage at issue in the trial—the Lloyd Mortgage. This mortgage was registered on January 26, 2018 in favour of Lloyds, securing a loan of \$1,600,000 to Ms. Wang as borrower. It was entered into through the use of the POA.

[16] Ms. Wang denies any knowledge of this mortgage, asserting once again that it must have been obtained as a result of the fraudulent activity of her son, Mr. Sun.

[17] However, the proceeds from the Lloyd Mortgage were also disbursed to the benefit of Ms. Wang and her estate, for the following purposes:

- (a) To pay out and discharge the Amber Mortgage in the amount of \$1,159,032.53;
- (b) To pay the property taxes for the Property in the amount of \$4,596.000; and
- (c) To pay the balance of the proceeds in the amount of \$375,623.72 to Ms. Wang; this amount was made payable to her by way of a cheque and deposited into Ms. Wang's primary chequing account with the Bank of Montreal (the "Wang BMO Account").

[18] Ms. Wang denies any knowledge of the cheque deposited into the Wang BMO Account, although she alone had authority over that account at the material time

[19] As of May 31, 2019, Lloyds had received a total of \$192,210 in payments toward the Lloyd Mortgage, as follows:

- (a) \$16,000 on March 1, 2018 by way of a postdated cheque from the Wang BMO Account;
- (b) \$10,000 on April 11, 2018 by direct deposit from Mr. Sun's bank account with TD Canada Trust (the "Sun TD Account");
- (c) \$6,210 on April 12, 2018, by direct deposit from the Sun TD Account;
- (d) \$100,000 on January 28, 2019 by a bank draft from Mr. Sun's bank account with the Canadian Imperial Bank of Commerce (the "Sun CIBC Account"); and
- (e) \$60,000 on May 31, 2019 by direct deposit from the Sun TD Account.

[20] Ms. Wang denied any knowledge of the transactions involving Mr. Sun's various bank accounts. She also denied having anything to do with the \$16,000 payment to the Lloyd Mortgage which was made through a postdated cheque from her BMO account, with respect to which only she had authority to deal.

### III. DISCUSSION

[21] It is not disputed that Mr. Sun executed the documents necessary for Lloyds to have a properly registered mortgage against the Property. Ms. Wang's only defence is to assert that the POA granted by Ms. Wang to her son, Mr. Sun, was forged and invalid, and that Mr. Sun was not authorized to enter into the Lloyd Mortgage.

#### A. Burden of Proof

[22] As the plaintiff in this action, Lloyds bears the legal onus to prove its case against Ms. Wang. However, the evidentiary onus is on Ms. Wang to prove that the Lloyd Mortgage was entered into fraudulently through a forged power of attorney. The onus of proof with respect to the allegation of fraud advanced by Ms. Wang is on a balance of probabilities. Some authorities suggest that this onus can be met only with clear and cogent evidence. In the case of *Bank of Montreal v. Chan*, 2004 BCSC 841 [*Chan*], this Court held as follows at paras. 23-24:

It is common ground that the validity of the mortgage rises or falls with the validity of the powers of attorney.

The Chan respondents bear the onus of proving the powers of attorney to be forgeries. Although the standard of proof is on a balance of probabilities, the onus will not be met except with clear and cogent evidence: *Continental Insurance Co. v. Dalton Cartage Ltd.*, [1982] 1 S.C.R. 164, 131 D.L.R. (3d) 559 (S.C.C.) at 169-170.

[23] The "clear and cogent evidence" standard is not, however, a departure from proof on a balance of probabilities. In *Wanson (Bristol) Development Ltd. v. Sahba*, 2018 BCCA 260, the Court, after reviewing the case law on the issue, said at paras. 28-29: "What these cases stress that the party with the burden of proving a

fact in issue must prove it on a balance of probabilities and on no higher standard, even if the fact involves criminal or other moral blameworthy conduct.”

[24] Most recently, in *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2013 BCCA 70, the Court reminded us at paras. 162 to 164 of the decision of the Supreme Court of Canada in *F.H. v. McDougal*, 2008 SCC 53. In that decision the Court “put to rest any debate that a heightened standard of proof applies in civil cases involving criminal or morally blameworthy conduct”. The level of scrutiny applied by the finder of fact “does not change with the seriousness of the case”. However, the quality of the evidence required to meet the balance of probabilities standard “will depend upon the nature of the claim and of the evidence” adduced.

**B. Credibility of the Defendant**

[25] This action stands or falls on the credibility of Ms. Wang, who bears the evidentiary onus to prove on a balance of probabilities that the impugned POA is the result of fraud and therefore invalid. As noted by our Court of Appeal in the oft-cited decision of *Farnya v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at p. 356 the “real test of the truth of the story of a witness...must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”.

[26] More recently, in the decision of *Youyi Group Holdings (Canada) Ltd v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 91, aff’d 2020 BCCA 130, the Court stated that in assessing credibility, the first step is to consider the evidence of a witness on its own, followed by an analysis of whether the evidence is inherently believable in the context of the facts of the case. Finally, the evidence should be evaluated based on the consistency of the evidence with that of other witnesses and the documentary evidence.

[27] Ms. Wang’s evidence at trial was contradicted on many points by the mass of documents proffered by Lloyds. It was also contradicted by the evidence of most other witnesses, and frequently by her own evidence. Ms. Wang’s responses to the

evidence led by Lloyds amounted to little other than blanket denials without any evidence to support those denials. In the face of the documentary evidence, as well as *viva voce* evidence to the contrary from various individuals who had no interest in the outcome of the litigation, Ms. Wang either flatly denied any knowledge of the POA and any of the multiple transactions leading to the execution of the Lloyd Mortgage (or the two Second Mortgages obtained before the Lloyd Mortgage and after the BMO mortgage on the Property), or said she could not recall them.

[28] Lloyds attempted to subpoena Mr. Sun but could not locate him. Ms. Wang denied any knowledge of her son's whereabouts despite their close relationship. She said she thought he might be in China, but did not suggest that she had made any effort to contact him. That in itself is remarkable, given the documentary evidence concerning the POA and the various banking transactions involving Mr. Sun. Further, Ms. Wang acknowledged that she had email contact with her son in order to receive the Wang BMO Account bank statements in preparation for this litigation. She also acknowledged in cross-examination that she had occasional telephone contact with him since March 2020 (after asserting in direct examination that she had had no such contact with him since that time).

[29] Ms. Wang's response to Lloyds' request that she provide any email or other correspondence between herself and Mr. Sun at all times material to the litigation was that all such correspondence had somehow been deleted from her computer without her knowledge.

[30] Faced with the bank statements concerning transactions involving Ms. Wang's bank accounts, with respect to which only she could authorize, Ms. Wang testified that she either did not review her bank statements or did not understand what they meant, and for that reason did not question them. That assertion is highly improbable, particularly given Ms. Wang's employment as a manager of an accounting department for a large shopping mall in China.

[31] At times during cross-examination, Ms. Wang said she was uncertain as to whether she monitored the Wang BMO Account. For the most part, her evidence



was that she did not do so, hence her lack of awareness of the deposit of the proceeds of the Lloyd Mortgage in that account. However, the documentary record undermines that assertion. For example, she admitted that in February 2018, she made a \$165,900 lump sum payment on the BMO Mortgage. This was only a few weeks after the deposit into that account of the Lloyd Mortgage proceeds. She must have reviewed that account and her account statements in order to know the amount then contained in the BMO Account when she made the lump sum payment.

[32] On January 26, 2018, only two weeks prior, the amount of \$375,623.72 was deposited into the Wang BMO Account. The same day, \$352,925.18 was transferred from that account to her son's account. Two days before that, \$249,000 was deposited to the Wang BMO Account, and on the same day, that cheque was returned NSF.

[33] Further, in cross-examination Ms. Wang acknowledged that she monitored her BMO accounts from China by periodically wiring money from her Chinese bank accounts to them, and instructed her BMO account manager to make payments to the BMO Mortgage. She confirmed that she approved the withdrawal of \$180,000 in December 2016 from the BMO Mortgage, that was then deposited first into the BMO Account, and then transferred to one of Mr. Sun's Canadian bank accounts to assist her son in the purchase of a new car. She then approved the withdrawal of an additional \$190,000 withdrawal from the BMO Account in January 2017 which was then deposited first into her BMO Account and then transferred to one of Mr. Sun's Canadian accounts, again according to Ms. Wang, to assist her son in the purchase of a new car.

[34] Documents provided by the Bank of Montreal show that at the relevant times, Mr. Sun was not a signing authority for the Wang BMO Accounts or that of the Wang TD #1 and #2 Accounts. Ms. Wang must have been monitoring her accounts and providing authority for the transactions related to the Lloyd Mortgage.

[35] Ms. Wang's evidence to the effect that she transferred to her son nearly \$400,000 in December 2016 and January 2017 to purchase a new car makes no

sense. This is particularly so in light of her evidence that she had no knowledge of her son's activities, whether he had a job or a girlfriend, whether he actually bought a car and, most incredibly, his whereabouts. At the same time, it is her submission that the secondary mortgages, including the Lloyd Mortgage, are the result of her son's fraud.

**C. Ms. Wang's presence in Vancouver in May 2017 when the second mortgage with Morning Capital were entered into**

[36] Ms. Wang insisted in her evidence that she was not present in Vancouver during the time that the Morning Capital documents were executed by her, despite the evidence of witnesses who testified that they dealt directly with her in the execution of the mortgage. Lloyds requested production of her credit card statements for those periods of time. Ms. Wang failed to produce them, saying the bank had provided some records but for reasons she could not explain, the bank had provided none for the times in question in May of 2017.

[37] Lloyds requested her cell phone records for the times in question to determine the truthfulness of Ms. Wang's assertion that she was not in Vancouver during those times. Again, Ms. Wang failed to produce them, and provided no evidence of any efforts on her part to obtain them from her cell phone provider. She said she had spoken with a representative of Telus, who told her she could not obtain the records unless she requested them in person. That is nonsensical given that her cell phone provider was Fido. She offered as an alternative that Fido's records were all in English such that she could not obtain the records she required. There is no evidence to suggest that Ms. Wang ever requested her cell phone records from Fido.

[38] Ms. Wang's failure to provide the documents that could support—or undermine—her assertion that she was not present in Vancouver in May 2017 give rise to an adverse inference respecting her assertion that she was not in Vancouver at that time.

**D. Evidence concerning Ms. Wang's execution of the Morning Capital Mortgage**

[39] Lloyds led evidence at trial concerning the execution of the Morning Capital Mortgage in May 2017. Although the Court was not required to make finding of fact concerning the validity of that mortgage, the circumstances surrounding Ms. Wang's involvement in the transaction are an important part of the factual matrix and have a significant bearing on Ms. Wang's credibility. If Ms. Wang was untruthful about her knowledge of and involvement with the Morning Capital Mortgage, then her credibility in all other respects is significantly undermined.

[40] Further, if Ms. Wang did execute the Morning Capital Mortgage, she received the benefit of the subsequent mortgages, each of which essentially paid off the Morning Capital Mortgage.

[41] The totality of Mr. Wang's evidence is a bare denial. She provided no documentary evidence or third party evidence to support that denial.

[42] The evidence of two witnesses called by Lloyds, Sally Kwan and Gary Lo, directly contradicts Ms. Wang's evidence concerning the Morning Capital Mortgage.

[43] Ms. Kwan, a licensed mortgage broker of several decades experience, testified that she met in person with Ms. Wang on May 4, 2017 to discuss the Morning Capital Mortgage. Her practice was invariably to meet with new clients to verify their identity. She confirmed that she had a strict practice of requiring original identification documentation, such as passports and driver's licenses, which contain picture identification. She recalled obtaining the originals of those documents from Ms. Wang, which she then photocopied. She had no doubt that the person she met with matched the photos on the driver's licence and passport she provided. Those photocopies were entered as exhibits in the trial.

[44] Ms. Kwan was not challenged in cross-examination that her invariable practice was to accept only originals of identification documentation for copying. It

was not put to her that she could have met with someone who looked like the person depicted in the identification documents but was not her.

[45] Ms. Kwan obtained a commitment document concerning the Morning Capital Mortgage from Ms. Wang, bearing her signature, and forwarded that to the lawyer retained to complete the transaction, Gary Lo.

[46] Mr. Lo is an experienced lawyer in private practice who frequently acts for private lenders and borrowers in residential mortgage transactions. He gave evidence as to his usual practice: He meets with his clients in person, obtains photocopies of their original identification documents, and verifies their identities. There was no evidence to suggest that Mr. Lo ever deviated, or deviated in this case, from his standard practice.

[47] Mr. Lo testified that he met with Ms. Wang on May 12, 2017 in order to execute the documents relating to the Morning Capital Mortgage. In this case, Mr. Lo was acting for the borrower, Ms. Wang. He said he took photocopies of Ms. Wang's original passport and her TD Bank credit card before completing the transaction. Those photocopies were entered as exhibits at the trial. Mr. Lo's evidence was that he did not accept photocopies of documents used to verify the identity of any person with whom he had dealings respecting mortgages. He said that he always compared the appearance of the client with the original photo identification. After determining that Ms. Wang matched her photo identification, Mr. Lo paid out the mortgage funds to her.

[48] When meeting with Ms. Wang, Mr. Lo required the presence of his office assistant, Anne Chiu, because she was fluent in Mandarin and Mr. Lo was not. Ms. Chiu had no independent recollection of the meeting. She testified that her role was to translate, and her invariable practice was to make copies of the original identification documents provided by the client.

[49] Ms. Wang could not explain how the originals of her passport, driver's license and TD credit card were used in the meetings with Ms. Kwan and Mr. Lo. She

acknowledged that she always kept her driver's licence with her in a billfold separate from her wallet whether she was in China or Vancouver. She had not lost any of the documents photocopied by Ms. Kwan and Mr. Lo. Her evidence was that someone who "looked like her" must have posed as her in these meetings, but she did not know how this person could have obtained the originals of her documents which to her knowledge had remained in her possession at the time.

[50] Ms. Wang confirmed that the photocopy of her passport taken by Mr. Lo's office appeared to be a true copy of the passport. She did not deny that the credit card photocopied at the office was hers, although she said she did not recall whether she had a TD Visa.

[51] There was abundant evidence available to Ms. Wang to corroborate her evidence as to her whereabouts in May 2017, including *viva voce* evidence of her husband, her mother, her friends and her work colleagues; her credit card statements and cell phone records; her phone photos with verified date/time metadata; security pass card records for work or home access, and security CCTV footage. Ms. Wang produced no evidence of her location in May 2017 to counter or undermine the evidence of Ms. Kwan and Mr. Lo.

[52] Further, the banking documents show that the Morning Capital Mortgage proceeds were deposited into Ms. Wang's TD Canada Trust Account ("TD Account #2"). In cross-examination she acknowledged that she opened that account, and that it was her signature on the opening documents.

[53] Mr. Lo acted in another mortgage transaction involving Ms. Wang. This time, he was acting for the lender, Amber Mortgage. In late November 2017, Mr. Lo was contacted by a Frank Wong who retained him to act for Amber Mortgage. According to Mr. Lo, Mr. Wong wanted to know whether a Power of Attorney used in a previous mortgage transaction could be used for the current transaction with Amber Mortgage. Mr. Lo advised him that it could not; a new Power of Attorney would have to be drafted. As a result, Mr. Lo drafted a new document to be signed by Ms. Wang and Mr. Sun, and sent it to Mr. Wong. Mr. Lo was not involved in its execution.

However, to his knowledge it was registered with the Land Title Registry, as required. To his knowledge, the transaction proceeded and the funds from the Amber mortgage were paid out.

[54] Mr. Lo then acted in the third mortgage transaction involving Ms. Wang, Mr. Sun and the POA. This time, it was Lloyds that was to provide the second mortgage. Mr. Sun, using the POA which on its face was granted by Ms. Wang, met with Mr. Lo to secure the mortgage. Mr. Lo recalled the meeting but did not recall what was said. Lloyds granted the mortgage; the monthly interest payments were in the amount of \$16,000 per month.

[55] As noted earlier, only \$192,210 was ultimately paid toward the Lloyd Mortgage. And, as noted earlier, Ms. Wang has denied any knowledge of the Lloyd Mortgage or the POA used by Mr. Sun to obtain the mortgage. Yet one of the \$16,000 amounts paid toward the Lloyd Mortgage, which payment was made March 1, 2018, was paid by a postdated cheque from Ms. Wang's BMO Account. The remaining eleven postdated cheques were returned NSF.

[56] In the face of this evidence, Ms. Wang persisted in insisting that she did not monitor the Wang BMO Account and that despite hers being the only authorization on the account, she did not authorize any of the payments to or from it. Her evidence is simply implausible.

**E. Validity of the POA used to obtain the Lloyd Mortgage**

[57] The POA, on its face, is restricted to use only with respect to all matters pertaining to the mortgage of the Property.

[58] Ms. Wang alleges that she did not authorize the POA used in the mortgage transactions by Mr. Sun, although the signatures appearing on the documents as the person granting the POA appear to be hers. For this assertion, she relies entirely on her denial that she did not execute the POA, and the evidence of the Notary Public executing the document that he did not recall executing it.

[59] The impugned POA used in the Lloyd Mortgage transaction appears, on its face, to have been executed with the assistance of a Notary Public, Reginald Chow. Mr. Chow was called by counsel for Ms. Wang.

[60] Mr. Chow testified that his firm was a family business originally located on Main Street, but was relocated approximately seven years earlier, in 2016, to an office on East Pender Street.

[61] Mr. Chow was shown the impugned POA, which bears his stamp and signature. He asserted that while he did draft POA/s from time to time, he did not think he had drafted this POA. He said the stamp appearing on the document was the stamp used by his firm before he relocated from Main Street to East Pender Street, but that to his knowledge it had not been used since then. That stamp, he said, should have been shredded when the firm relocated. He agreed that while the signature under the stamp appeared to be his signature, he did not think it could be his; he said he did not normally put his stamp over top of his signature, as the signature appeared on the impugned POA. He conceded in cross-examination, however, that he had occasionally placed his stamp over his signature in the past. He also agreed that he had no specific recollection of each POA he had executed in the past 26 years of his practice.

[62] Mr. Chow conceded that the signature did appear to be his, as did the stamp. There is no reasonable explanation for the appearance of the stamp and signature on the POA other than that they were put there by Mr. Chow, who was extremely defensive when giving his evidence. It may be that Mr. Chow was concerned about the prospect of his liability should it be proved that the POA was fraudulently obtained. I am satisfied that the signature and stamp are those of Mr. Chow.

#### **F. Summary of Conclusions**

[63] The pattern of Ms. Wang annually transferring large amounts of money from her accounts to Mr. Sun for his use, is consistent with the ultimate disbursement of the proceeds from the Second Mortgages to her. The proceeds from all of the Second Mortgages were initially deposited into accounts held by Ms. Wang, after

which the proceeds of each of those mortgages were transferred out of her accounts to pay off the previous Second Mortgage, or into other accounts, most held by Mr. Sun or for his benefit. This is the same pattern seen with respect to the \$180,000 December 2016 draw and the \$190,000 January 2017 draw on the BMO mortgages. Those funds went from the Wang BMO Account, over which she had exclusive control, to Mr. Sun.

[64] The inference to be drawn from these facts, indeed the only inference available on the facts, is that Ms. Wang entered into the various Second Mortgages to provide her son with access with significant funds for whatever use her son intended to put those funds. At one point in her cross-examination, Ms. Wang suggested that Mr. Sun needed a \$180,000 transfer of funds to purchase a car, as well as a second transfer in that amount. She did not explain how she knew of Mr. Sun's need for a car (and a car of such staggering worth) in light of her evidence that she did not know the whereabouts of her son.

[65] Ms. Wang's position in this litigation is that someone who bore a certain resemblance to her, and who somehow obtained her identification documents, managed to pass herself off as Ms. Wang during the various meetings in which the Morning Capital Mortgage was obtained. She had no explanation as to how, or by whom, documents in her exclusive possession and control were used by some other person (or compelling facsimiles) in order to facilitate that transactions. The evidence is overwhelmingly to the contrary. Ms. Wang's assertion that she was not present in Vancouver at the material times is completely undermined by her failure to produce a single document or piece of evidence to support that assertion when there were numerous documents and evidence available to corroborate it.

[66] With respect to the Amber and Lloyd Mortgages, Ms. Wang's position is that she did not grant the POA to her son and that he actively defrauded her by forging the document. Once again, the documentary evidence is overwhelmingly to the contrary. On its face, the POA was executed by Ms. Wang as a signatory in favour of her son, Mr. Sun. The evidence establishes, further, that numerous transactions



occurring after the each of the Second Mortgages was paid out, involved accounts over which Ms. Wang had exclusive authority at the time.

[67] Counsel for Ms. Wang described in final argument an alternative scenario in which he posited that Mr. Sun was a “prodigal son” whose lavish lifestyle, including a love of gambling and fancy cars, and his inability to pay for that lifestyle, compelled him to defraud his mother by forging the POA, enabling him to enter into the various mortgages and deal with her bank accounts. The difficulty with this argument is there is not a single piece of evidence to establish it. With respect, it is pure fiction. Mr. Sun could not be found by Lloyds, despite the company’s efforts to subpoena him. However, it did not fall to Lloyds to call Mr. Sun as a witness. The evidentiary burden was on Ms. Wang to establish on a balance of probabilities that the POA was fraudulently drafted and used by her son in the transactions with Lloyds such that the Lloyd Mortgage was invalid. Ms. Wang’s assertion that she did not know the whereabouts of her son is highly improbable, and I do not accept it. As I have already noted, Ms. Wang admitted in cross-examination that she had been in contact with her son during and after the times material to the litigation. For example, she conceded that was in touch with him in preparation for this trial in order to access banking records. She and her son were also communicating with one another, at least occasionally, during 2017 and 2018 when the various mortgages were executed and a significant amount of funds were transferred from Ms. Wang’s bank accounts to that of her son, apparently to fund the purchase of a car for him.

[68] I have concluded on the evidence as a whole that Mr. Sun’s absence from the trial was engineered by Ms. Wang in order to advance her allegation of fraud and thereby undermine the validity of the Lloyd Mortgage.

[69] On the evidence as a whole, I have concluded that Lloyds has satisfied its legal burden in this litigation with respect to the debt owing by Ms. Wang as a result of the default under the Lloyd Mortgage. Ms. Wang has failed to establish the evidentiary burden on a balance of probabilities that the POA is the result of fraud.

In the result, I conclude that the POA is valid. It follows that the Lloyd Mortgage is also valid.

[70] Lloyds is entitled to an Order Nisi on the usual terms, with a shortened redemption period of *one week* [instead of one day, as sought]. Specifically, Lloyds is entitled to:

- (a) A declaration that the Lloyd Mortgage is a charge on the Property which ranks in priority to the interest in the Property of the defendant, Ms. Wang.
- (b) Declarations and orders that:
  - 1. There has been a default under the Lloyd Mortgage, and the last date for redemption shall be one week from the date of publication of the decision in this matter (the “Redemption Period”);
  - 2. The amount due and owing to Lloyds which is secured by the Lloyd Mortgage as of December 5, 2022 is the sum of \$2,623,383.31, together with interest accruing after that date at the rate of 12% (the “Redemption Amount”) calculated monthly not in advance, and, in addition, Lloyds’ costs on a solicitor-and-client basis of this proceeding in accordance with the terms of the Lloyd Mortgage, which provides for costs on a solicitor/client basis;
  - 3. The Redemption Amount is subject to a further summary accounting, and the parties are at liberty to apply to the Registrar for such an accounting;
- (c) Orders that:
  - 1. Upon the Defendant Ms. Wang paying into this Court, or to the solicitors for Lloyds, the Redemption Amount

before the pronouncement of Order Absolute or an Order approving a sale of the Property, then Lloyds will reconvey the Property free and clear of all encumbrances in favour of Lloyds to Ms. Wang or others who made payment on her behalf; and

2. If the Property is not redeemed prior to the Redemption Period, then Lloyds will be at liberty to apply for an Order Absolute, and, on Order Absolute being made, Ms. Wang will be absolutely foreclosed from all right, title, and interest in or to the Property, and shall immediately deliver vacant possession of the Property to Lloyds.

“The Honourable Madam Justice C.A. Wedge”