

## ESTABLISHING IDENTITY

A mortgagee is required to take reasonable steps to verify the identity of a mortgagor.

In the recent case of *C&F Nominees Mortgage Securities Ltd V Karbotli & Ors* [2020] VCC 987 the Court found relying on a solicitor's certificate did not constitute reasonable steps for a mortgagee to properly verify the identity of a mortgagor under s87A of the *Transfer of Land Act 1958* (Vic).

The case involved the loan by C&F Nominees Mortgage Securities Ltd of \$800,000 to a company secured by personal guarantees by two directors who were a son and his mother. The mother, Ms Issa, was also to provide a mortgage over a property she owned in her own name.

The financier received identity documents for Ms Issa including copies of pages from her passport, copy of an expired drivers licence and a Medicare card as well as other tax and financial documents. They also received a solicitor's certificate which confirmed the practitioner had identified and advised Ms Issa about the general nature and effect of the documents and that she appeared to understand his explanation. Ms Issa's signature on the mortgage, however, was not witnessed by the practitioner.

Ms Issa later said that her signature on the mortgage was a forgery as she never signed the documents. She further argued that the financier had failed to take reasonable steps to identify her pursuant to s87A and the mortgage should be removed from the register.

### Reasonable steps

The Court acknowledged that the identity documents the financier received for Ms Issa did show she was a real person and the owner of the security property, but they did not show that

she was the person who purported to execute the mortgage. The Court went on to say at [87]:

"In themselves, they [the identity documents] could not be regarded as reasonable steps toward establishing the identity of the person signing the mortgage. They could constitute such steps in combination with something else, and the 'something else' would be proof, or, at least, some distinct indication, that the person who executed the mortgage was the person depicted in the recently-expired driver's licence. The entire purpose of 'photo ID' is to enable the person seeking to establish the identity of a subject to compare the officially labelled photograph, as in a driver's licence or passport, with the features of the person to be identified. In the absence of such comparison, 'photo ID' is incapable of establishing identity. That comparison constitutes the indispensable link in the process".

The Court found that it was not reasonable steps for the financier to rely on the solicitor's certificate, which was designed for another purpose and not that of ensuring the identity of the person who signed the mortgage. The purpose of the solicitor's certificate is to ensure the mortgagor receives legal advice about the effect of the documents they are signing; it does not guarantee that the person who signs the mortgage is the owner of the security property. There needs to be an explicit and direct link between the photo identification and the actual execution of the mortgage document (at [91]). ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit [www.lplc.com.au](http://www.lplc.com.au).

### SNAPSHOT

The lessons from this case for lenders and their legal advisers are:

- Section 87A requires a mortgagee to take reasonable steps to verify the authority and identity of a mortgagor to ensure that the person executing the mortgage as mortgagor is the same person who is the registered proprietor of the security property. This is the mortgagee's responsibility, not the solicitor for the mortgagor.
- Relying only on the mortgagor's solicitor's certificate is not sufficient, as the certificate addresses whether appropriate legal advice has been given to the mortgagor about the documents and the transaction, not whether they executed the mortgage.



# Legal Careers

Take control of your career  
Australia's premier resource connecting you  
to your perfect role.

[legalcareers.com.au](http://legalcareers.com.au)

