

## Appendix A: Sample Memorandum Opinion

### 附錄 A：備忘錄判決範本

The following excerpt is an example of a memorandum opinion.

備忘錄判決範本摘錄。

This is a consolidated appeal from two actions . . . . Defendants . . . appeal from final judgments of foreclosure and sale entered in the [district court] dated . . . and . . . . We need not recite the facts of this case, since they are set forth in detail in the district court’s two thorough opinions, reported at . . . . Familiarity with these facts is assumed. See also [related action].

本件上訴係兩件不同個案的合併上訴。……被告等就地方法院拍賣抵押物之終局判決提起上訴。本件事實，兩造已在一審詳細陳述，熟悉相關事實已堪認定，爰引用訴訟資料，不再贅述。

The principal argument of [defendants] on appeal is this: The district court erred in dismissing the “faithless agent” defense to foreclosure under [state] law. That defense is an attempt to avoid the established rule of agency law that a principal is liable to third parties for the acts of an agent operating within the scope of the agent’s real or apparent authority. See *British American & Eastern Co. v. Wirth Ltd.*, 592 F.2d 75, 80 (2d Cir. 1979). Appellants . . . do not contest that appellee . . . , the mortgagee of the properties involved here, was a third party. Nor do they deny that [appellee] was dealing with their agent [land company] and that the latter was acting within the scope of its apparent authority. Nevertheless, they invoke the faithless agent defense, claiming that [appellee] should be barred from foreclosing because it was aware of the mismanagement of B . . . , who was acting as president of [the land company]. To support this view, they point to evidence that [appellee] believed that B’s mismanagement was the root cause of the default.

被告上訴主旨略以：針對州法規定之拍賣，地方法院不採被告所提「不忠代理」（按即類似無權代理）抗辯，有所違誤。該抗辯係為免除代理法律規定，本人應就代理人真正或者表見代理之範圍內行為，對第三人負責。上訴人……並不爭執被上訴人，……即本件財產所涉之抵押權人為第三人，亦不否認被上訴人係與上訴人之代理人（不動產公司）在表見代理的範圍內進行交易。然而，上訴人提出「不忠代理」之抗辯，主張應該禁止實行抵押權，因被上訴人知悉不動產公司負責人 B 不當管理，並且舉證被上訴人亦認 B 之不當管理乃上訴人違約之原因。

We are not persuaded that the district court erred in rejecting the faithless agent defense. Assuming arguendo that this defense may be invoked under the right circumstances,

[非正式譯本]

we considered and rejected it in [citation]. Indeed, the party asserting the faithless agent defense in [citation] appears to have been essentially the same, in all but name, as [defendants]. [Citation.] Moreover, even if, as defendants contend, principles of collateral estoppel do not bar their claim, we find the reasoning of the [citation] panel dispositive on this record. “It cannot be that a mortgagee’s awareness of defaults under a mortgage constitutes awareness that a managing agent is engaged in self-dealing.” [Citation.] On the record before us, “[f]aced with only conclusory allegations and unsupported factual assertions,” we reject, as did the [citation] panel, the “faithless agent’ defense.” [Citation.]

本院認為地方法院駁回「不忠代理」抗辯，並無錯誤。即使該項抗辯在特定要件下可以採用，本院考慮後仍予駁回。當事人（按即上訴人）主張之「不忠代理」抗辯除了名稱之外，本質全然相同。況且，即使被告（按即上訴人）主張基於「附帶禁反言」之原則（按即類似爭點效原則）並未禁止重新主張，但本院認為判決理由業已記載：「在抵押關係下，抵押權人知悉違約，並非必然知悉代理人係為自己從事交易。」根據這些紀錄，「僅有推論性、欠缺事實根據的主張」，本院駁回上訴人「不忠代理」之抗辯。

The judgments of the district court are affirmed.

維持一審判決。