

**LOW  
PRIORITY**

IN THE COURT OF APPEAL OF NEW ZEALAND

CA 8/94

**BETWEEN KELVIN DOUGLAS TAYLOR**

**Appellant**

**A N D THE NATIONAL BANK OF NEW  
ZEALAND LIMITED**

**First Respondent**

**A N D CROWN FARMERS LIMITED**

**Second Respondent**

**Coram:** Thomas J  
Keith J  
Cartwright J

**Hearing:** 16 June 1997

**Counsel:** K D Taylor appears in person  
R M Goldsbury for First Respondent  
J S Rowan for Second Respondent

**Judgment:** 16 June 1997

---

**JUDGMENT OF THE COURT DELIVERED BY THOMAS J**

---

Mr Taylor is the appellant in this proceeding, the National Bank of New Zealand Ltd is the first respondent and Crown Farmers Ltd is the second respondent. Crown Farmers has applied to the Court to have the appeal declared abandoned.

The proceedings were commenced by Mr Taylor in the High Court at Wanganui on 6 October 1983. The claim is related to a farm which he formerly owned and which was mortgaged to the National Bank. The mortgage had fallen into arrears and the Bank exercised its power of sale. Mr Taylor claimed that the farm had been sold at an

under value in breach of the Bank's duty to obtain the best possible price. The proceeding was eventually heard before Ellis J on 18 October 1993. By this time only the Bank and Crown Farmers remained as defendants, the other defendants having been struck out.

Ellis J delivered his judgment on 21 October 1993. He dismissed Mr Taylor's claim. It appears that the judgment has not been sealed. Nevertheless, on 25 January 1994 Mr Taylor served a notice of motion of appeal on counsel for Crown Farmers. Considerable delays then occurred and since February 1995 Mr Taylor has not taken any further steps in relation to the appeal at all.

Mr Taylor appeared today in person to seek an adjournment and to oppose Crown Farmers' application. He raised two main points in support of his application. The first relates to a claim which Mr Taylor has against the New Zealand Forest Service. Mr Taylor is seeking a settlement with the Forest Service to enable him to pay counsel to prosecute the appeal. From what we were told, it appears that some farm machinery owned by Mr Taylor was damaged by the Forest Service and he seeks to recover the cost of that machinery. There is, however, no firm evidence of this claim before us. It would appear that it is uncertain in amount. Moreover, it may well be that the Forest Service will eventually decline all liability. We are not therefore satisfied that this putative claim provides a satisfactory basis on which to resist Crown Farmers' application.

The other point relates to Mr Taylor's ill-health. He suffered a farm accident prior to the commencement of the trial which required him to have a hip joint replacement operation. He stated that this has caused him real inconvenience, and that may be accepted. Mr Taylor advised us that he has also recently suffered a heart attack. His physician has arrived back from overseas and will be giving him further treatment in the immediate future. Again, however, we are not satisfied that Mr Taylor's medical difficulties provide a sufficient excuse for the delay which has occurred. It would seem to us that an appeal, which has lagged significantly over time, could have been prosecuted with much more diligence than has been the case.

It is also to be noted that Crown Farmers and the Bank have consented to two earlier applications for an adjournment of this appeal by Mr Taylor, the second adjournment being agreed to expressly on the basis that it would be a "final adjournment". Some finality must be brought to the proceeding. We consider that the delay is untoward and justifies the granting of the application.

In any event, if the appeal were to proceed we doubt that it would succeed. A perusal of Ellis J's judgment indicates that the case turned largely on findings of fact. It has been stated and restated many times over that this Court is loathe to interfere with the findings of fact of the Court at first instance. No points of law seem to emerge for resolution. In these circumstances, therefore, it is highly probable that the appeal would fail on its merits, even if allowed to proceed.

The application for adjournment is declined and the application to declare the appeal abandoned is therefore granted.

There will be no order as to costs.

Mr Taylor made a payment into Court as security for the appeal. This Court directs that this sum be paid out to Mr Taylor together with any interest which may have accrued thereon.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line that extends to the right and then curves upwards.

**Solicitors**

R M Goldsbury, Wanganui for First Respondent  
McElroys, Auckland for Second Respondent