

X

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A.148/79

1131

BETWEEN

PETER GILES DAVEY

Plaintiff

A N D

MICHAEL JOHN HARWOOD

First Defendant

A N D

PETER DUMERGUE

Second Defendant

Hearing in Chambers: 28 August 1984

Counsel: A.C. Hughes-Johnson for Plaintiff
N.V. Taylor for Harwood
K.L. Jones for Dumergue

Judgment: - 3 SEP 1984

JUDGMENT OF ROPER J.

This is a motion by the Plaintiff Mr Davey seeking directions concerning the implementation of the judgment of Casey J. as varied by the Court of Appeal.

This is the relevant passage from the judgment of Casey J.:-

" Mr Davey has claimed \$9,350, but he is, of course, only entitled to recover his actual loss occasioned by relying on the representation. The sale price of the land was \$9,750 and I find it is worth only \$750, so that prima facie his potential loss is \$9,000. He paid \$3,750, and the balance of \$6,000 was secured on the mortgage which Mr Harwood sold. Therefore Mr Davey is still liable at the suit of the present mortgagor for that principal sum plus interest at the higher rate of 13% from 15th September 1978, which comes to \$3,120 for the four years to the corresponding date this year. I cannot award more in damages than the amount claimed, but I have a discretion under s.87 of the Judicature Act 1908 to award interest, limited to the maximum of 11%. The Plaintiff will be compensated to the extent I am able by an award

of \$9,350 for damages, together with interest thereon at 11% from 15th September 1978 to the date of judgment. There will be judgment accordingly against both Defendants, together with scale costs, and disbursements and witnesses' expenses to be fixed by the Registrar. I allow \$500 in all for the two extra days. To give Mr Dumergue the opportunity to reach an arrangement with the transferee of the mortgage I direct a stay of execution in respect of \$6,000 and interest at 11% thereon until the further order of the Court. I have in mind that the mortgage may be discharged by a direct payment to the transferee otherwise payment of the amount stayed to Mr Davey must be on the basis that it is applied in reduction of or discharge of the mortgage, thereby releasing Mr Dumergue pro tanto from any liability he may have thereon to the transferee."

The Court of Appeal reduced the damages from \$9,350 to \$8,250 with the result that final judgment was entered for the Plaintiff for \$16,064.49. That figure includes interest from 15th September 1978 to the 28th March 1984, being the date of judgment.

The Defendants have arranged discharge of the mortgage pursuant to the option given them by Casey J. and have made payments to the Plaintiff's solicitor on account of the judgment and the question is whether the judgment has now been satisfied. Although the mortgage provided for interest at 13% reducible to 12% for prompt payment I have already ruled that the Defendants, having discharged the mortgage, are entitled to a credit against the judgment debt of \$6,000 plus interest thereon at 11%. (It appears that the Defendants may have been able to settle the mortgage at a discount but I see no reason why the Plaintiff should benefit from that circumstance.)

Calculations have been presented by Counsel for the Plaintiff which in my opinion are unnecessarily complicated. The Defendants assumed responsibility for the repayment of the mortgage so the matter can be simplified by deleting the mortgage sum, and the interest thereon, from the calculation.

This is my calculation of the present position which is presented more as an indication of principle for I do not guarantee the accuracy of my arithmetic.

Judgment as at 28.3.84	\$16,064.49
Less Mortgage of \$6,000 and interest at 11% thereon	<u>9,650.00</u>
	6,414.49
Plus interest at 11% from 28.3.84 to 17.8.84 (being the date cheques paid)	<u>274.00</u>
	6,688.49
Less paid:	<u>5,569.58</u>
Balance owing as at 17.8.84	<u>\$1,118.91</u>

(In addition the Defendant Mr Harwood is liable for interest from 17th August 1984 on his cheque for \$2,784.79 which could not be banked until 28th August 1984.)

Solicitors:

Dougall Stringer & Co., Christchurch, for Plaintiff
Champion Allan & Co., Christchurch, for Harwood
White, Fox & Jones, Christchurch, for Dumergue