

IN THE HIGH COURT OF NEW ZEALAND  
WANGANUI REGISTRY

M 18/88

BETWEEN      WILLIAM JOHANNES EGGERS  
                    AND VELDA DULCIE EGGERS

Appellants

A N D            TRUST BANK WANGANUI

Respondent

Hearing:        13 July 1988

Counsel:        N.P. Dench for the Appellants  
                    C.P. Brosnahan for the Respondent

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ORAL JUDGMENT OF ELLIS J

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This is an appeal by Mr and Mrs Eggers against a decision in the District Court granting an order that they vacate their house at 24 Mill Street, Marton. The situation is that Trust Bank purchased the property at a Mortgagee's Sale conducted at the instance of another party, the then first mortgagee. Since then, Trust Bank has become the registered proprietor of the fee simple and there has been some correspondence and agreement between Trust Bank and the Appellants as to continued occupation of the premises. The Appellants are either tenants of sufferance or tenants at will of the property. The Respondent has applied for possession and its title has not been challenged in these proceedings. It must follow therefore that the Respondent was entitled to possession,

the only question being how much time the Eggers should be given to vacate. Without canvassing his reasons to any great extent, the District Court Judge refused mesne profits and allowed the Eggers four weeks or thereabouts to vacate.

I am aware of the uncertainties as to the application of s.105 of the Property Law Act, for example, see commentary by the learned Editor of Hinde, McMorland and Sim on Land Law, paragraphs 5.022 and 5.023. I do not explore that difficulty further, as Mr Brosnahan advises me from the bar that Trust Bank would not demur if the Eggers were granted four weeks to vacate.

Accordingly, the appeal must be dismissed and the Eggers must vacate by the 10th of August 1988.

It would not be proper to leave the matter simply at that, some reference should be made to the obvious misunderstandings that the Eggers have as to their position. They plainly have a sense of grievance as to what has taken place. That can only be resolved by proceedings other than the present. It also seems plain, and indeed Mrs Eggers realised, that a clear statement of all accounting matters leading up to the Mortgagee's Sale is essential if the problem is to be fully unraveled and explained. That too is not a matter that can involve this Court on these proceedings. I understand from Mr Dench that the Eggers may be filing other proceedings which could possibly assist them. That will have to await such action as they eventually take. Mr Brosnahan applies for costs. There is nothing that can be said in opposition to that. Under the circumstances, I award costs of \$250.

*ANDREW J*  
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