

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-001514

UNDER the Land Transfer Act 1952

IN THE MATTER OF an application to remove caveat no
7916169.1 pursuant to section 143 of the
Land Transfer Act 1952

BETWEEN WESTPAC NEW ZEALAND LTD
(1763882)
Applicant

AND TAKAPUNA VILLAGE TRUST LTD
Respondent

Hearing: 25 March 2009

Appearances: G K Holm-Hansen for Applicant

Judgment: 25 March 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE ROBINSON

Solicitor: Simpson Grierson, Private Bag 92518 Auckland

[1] Abdul Abdulrahman and Aryan Trustees Ltd are the registered proprietors of an estate in leasehold in a property in Auckland. The property consists of an apartment at Beach Road, Auckland City. Westpac New Zealand Ltd, the applicant, has advanced money by way of mortgage to the registered proprietors. Because they were in default Westpac has exercised its power of sale. The property has been sold. However, the purchaser is unable to settle the sale because the respondent has lodged a caveat.

[2] The mortgage was duly registered against the title to the property on 17 November 2005. The caveat was lodged on 22 August 2008. It is founded by the respondent on a claim to be entitled to a beneficial interest as cestui que trust by virtue of an express trust between Takapuna Trust Ltd and the registered proprietor. The address for service of the respondent as caveator referred to in the caveat is Northridge Plaza 110 Don McKinnon Drive, Albany. However, efforts to serve the documents at that address have been fruitless. Attempts to correspond with the respondent addressed to the respondent at Northridge Plaza ,110 Don McKinnon Drive, Albany have been unsuccessful and the correspondence returned. The address of 110 Don McKinnon Drive comprises a shopping complex with many occupants. Consequently, the address for service does not provide an identifiable address upon which to serve the documents.

[3] The evidence produced by the bank is to the effect that Takapuna Village Ltd is an incorporated company, its director is Richard John Martin. He is the person who appears to have signed the caveat. The registered office of Takapuna Village Ltd is 3-9 Northcroft Street, Takapuna. However, inquiries through the internet with the assistance of “google” show that the address comprises commercial and retail residences as well as the Sentinel apartments complex. Consequently, the address for service for Takapuna Village Ltd does not provide an identifiable address upon which to serve documents.

[4] Eventually Miss Milward did effect service by delivering the documents to Angela Doran, property manager who acknowledged that the address where the

documents was delivered was the registered office of Takapuna Ltd. Miss Doran advised Miss Milward that Richard Martin the director of Takapuna Village Trust was away and that she would accept service.

[5] The evidence I have reviewed clearly establishes that whatever interest Takapuna Village Ltd might have, must be subject to the rights of Westpac Ltd as mortgagee. In those circumstances, I am satisfied that Westpac Ltd is entitled to an order directing the removal of the caveat. Consequently, there will be orders in terms of the application. I also direct that the respondent pay the applicant's costs on a 2B basis with disbursements as fixed by the registrar.

Associate Judge Robinson