

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

CIV-2009-470-213

IN THE MATTER OF an application for summary judgment for
the recovery of land

BETWEEN COURTNEY PARK LIMITED
Plaintiff

AND FREDDY HOOKER
Defendant

Hearing: 10 June 2009

Appearances: Mr M J Toner for Plaintiff

Judgment: 10 June 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE

Solicitors:

M J Toner, P O Box 13394, Tauranga

Copy:

Mr F Hooker, 62 Courtney Road, Tauranga

[1] In this case the vendor has given a notice of cancellation under a long-term purchase agreement over land. The application for summary judgment seeks a number of orders with the principal one being recovery of possession of the property situated at 62 Courtney Road, Tauranga and payment of the sum of \$2,200 per week which the applicant was entitled to under the agreement. No steps have been taken by the defendant and the plaintiff has filed evidence establishing breaches of the contract on the part of the defendant and has satisfied me that it was entitled to cancel the contract. As a result the plaintiff is not required to perform the contract any further and is entitled to recovery of possession of the property.

[2] Given the limited material before me today I am not prepared to make an order directing the defendant to pay damages arising from his remaining in possession of the property. As to the first order sought in the application for summary judgment which is an order 'cancelling the agreement for sale and purchase' it seems to me that the act of cancellation of an agreement in terms of s 7 of the Contractual Remedies Act 1979 is an act of a party to the contract rather than to the Court. The fact that I have granted relief by way of recovery of possession indicates that I accept that the plaintiff was entitled to cancel the contract as I have said because the purchaser was in breach. I do not believe that any further explicit order is necessary.

[3] The final matter that needs to be dealt with is the costs of the summary judgment application and I consider that those should be reserved.

[4] The Registrar is to allocate a conference for this matter in case the plaintiff intends to proceed further. If the plaintiff does not wish to proceed further it is open to him to file a discontinuance.

J.P. Doogue
Associate Judge