

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

CIV-2009-470-211

UNDER the Property Law Act 2007

BETWEEN LIBERTY FINANCIAL LIMITED
Plaintiff

AND BADEN THOMAS RAWLE
Defendant

Hearing: 10 June 2009

Appearances: Mr Kettelwell for Plaintiff
No appearance for Defendant

Judgment: 10 June 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE

Solicitors:

*Lowndes Associates, P O Box 7311, Auckland
(Counsel : Sharp Tudhope, Private Bag 12020, TAURANGA)*

Copy:

Mr B T Rawle, 197 Pukehina Road, Pukehina R D 9, Te Puke

[1] This matter was called in my summary judgment list today – 10 June 2009. No steps have been taken by the defendant to oppose the application. When the proceeding was called a Mr Wenzel sought to address me and to table documents in the proceeding. Mr Wenzel is not a barrister and solicitor of the High Court of New Zealand and has no rights of audience therefore he has no entitlement to address submissions to the Court whether orally or in writing. I declined to hear him. He has tabled some documents which will be returned to the defendant to pass on to him.

[2] The material that is on the Court file takes the form of affidavits, pleadings and a written memorandum of submissions from the plaintiff's solicitor all of which satisfy me that the defendant is in occupation of the property which is the subject of the summary judgment application. I am further satisfied that the defendant was adjudicated bankrupt on 27 April 2009. That notwithstanding, I conclude that the plaintiff's counsel is correct in submitting that the power of the plaintiff as mortgagee under a mortgage granted in or about May 2007 is entitled, in the circumstances of the case, to recover possession. Those relevant circumstances are that the Official Assignee has disclaimed entitlement in respect of the property in question and that the mortgagee has power to resume possession of the property on default occurring.

[3] For those reasons, in my view, the plaintiff is justified in seeking the order sought in prayer for relief (a) of the statement of claim and I order that the defendant forthwith deliver up vacant possession of the property contained and described in Certificate of Title SA3B/1158 (South Auckland Registry).

[4] The other claims in the statement of claim which are in debt cannot be the subject of judgment because of the present status of the defendant as an undischarged bankrupt. Therefore the application for summary judgment so far as those claims are concerned is dismissed

J.P. Doogue
Associate Judge