

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

CIV 2009-485-794

BETWEEN

JOHNSTON LAWRENCE SOLICITORS
NOMINEE COMPANY
Plaintiff

AND

P K J SEARLE
Defendant

Hearing: 22 June 2009

Appearances: T. Blake - Counsel for Plaintiff
T. Lamb - Counsel for Defendant

Judgment: 22 June 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

Solicitors: Johnston Lawrence, Lawyers, PO Box 1213, Wellington
Hughes Robertson, Solicitors, PO Box 2513, Wellington

Introduction

[1] Before the Court is an application by the plaintiff for summary judgment against the defendant.

[2] A memorandum has been filed in this Court signed by counsel for both parties confirming that the defendant consents to the plaintiff's application for summary judgment in so far as the principal sum, interest and commission on collection charges due under the mortgage guarantee given by the defendant are concerned. There is an issue however regarding costs on this matter.

Summary Judgment Orders – Principal and Interest

[3] That said an order for summary judgment is now granted in favour of the plaintiff against the defendant effectively unopposed for the following:

- (a) The sum of \$350,000.00 being the principal sum outstanding under the mortgage.
- (b) Interest of \$21,695.88 being interest accrued under the mortgage from 15 May 2008 to 15 April 2009 (less a part payment which had been made of \$20,012.49).
- (c) Interest under the mortgage from 15 April 2009 to 22 June 2009 (67 days) amounting to \$8,350.88.
- (d) Interest continues to accrue on the outstanding principal sum under the mortgage at the rate of \$124.64 per day from today, 22 June 2009.

Costs

[4] So far as costs on the summary judgment proceeding are concerned, as I understand the position from both counsel, no objection is taken by the defendant to initial solicitor/client costs totalling \$9,225.00. These costs have been rendered by the plaintiff to the defendant in an account dated 29 May 2009 with respect to the

default under the mortgage. They are payable by the defendant in terms of the default costs provision in the mortgage.

[5] In addition, as I understand it, no objection is taken by the defendant to a claim for disbursements of \$1,401.50 being the defendant's share of disbursements incurred in this proceeding claimed in a tax invoice issued by the plaintiff dated 29 May 2009.

[6] Here, the plaintiff, however, seeks additional costs subsequent to its account for \$9,225.00 dated 29 May 2009. The amount sought by way of solicitor client costs for this period totals \$2,925.00.

[7] Initially, Mr. Lamb for the defendant opposed this \$2,925.00 costs claim from the plaintiffs.

[8] As I understand this opposition, it stems principally from the defendant's contention that when the original summary judgment proceedings were issued and an affidavit of Richard William Perry dated 30 April 2009 in support filed and served, the plaintiff omitted from the accompanying exhibited documents critical parts of the mortgage itself which included the personal guarantee from the defendant.

[9] That said, here Mr. Lamb for the defendant argued that the defendant acted quite properly at that point in filing a statement of defence and notice of opposition to the present summary judgment application.

[10] Before me, Mr. Blake for the plaintiff put forward no real argument to contest this claim. It does appear that it was probably through a simple oversight that the affidavit of Mr. Perry in support of the summary judgment application did not include the critical guarantee pages.

[11] That said, in my view, the plaintiff is entitled to costs subsequent to its 29 May 2009 tax invoice but only for the period after the defendant's consent to the summary judgment application dated 19 June 2009 was given.

[12] Given this conclusion, costs are now to be awarded to the plaintiff on this proceeding for the period from 19 June 2009 up to the present time in terms of the mortgage on a solicitor client basis.

[13] Counsel are urged to liaise to settle the amount of these additional costs which presumably will not be substantial.

[14] Leave is reserved, however, for either party to approach the Court if additional assistance may be required to settle this issue.

Costs Orders

[15] Accordingly, for the sake of completeness I now make an order relating to costs on the summary judgment application before the Court.

[16] Costs on the present proceeding are awarded to the plaintiff against the defendant for the following:

1. The sum of \$9,225.00 being the amount outstanding under the 29 May 2009 tax invoice.
2. Disbursements totalling \$1,401.50 being the agreed one-half amount also outstanding under the 29 May 2009 disbursement invoice.
3. Costs on a solicitor client basis to be agreed between counsel or otherwise determined by the Court with respect to the present proceeding from 19 June 2009 up to the present.

[17] As to the amount for costs under para. [16](3) above, counsel have now informed me that sensibly Mr. Blake and Mr. Lamb have just conferred on the issue of costs for this period from 19 June 2009. Of the amount originally sought being \$2,925.00 the defendant consents to an order for costs for this period being made at 50% of this sum being \$1,462.50 and this is accepted by the plaintiff. An order for this \$1,462.50 final amount of costs is now made.

‘Associate Judge D.I. Gendall’