

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

**CIV 2009-404-002550**

BETWEEN	BANK OF NEW ZEALAND Plaintiff
AND	SKIPWITH BRIAN LOWIS TAYLER AND STEPHEN JOSEPH EDWARD HATFIELD AS TRUSTEES OF THE WILL TRUST First Defendants
AND	X-ZECK RENTALS LTD Second Defendant
AND	LUXOR DEVELOPMENTS LTD (IN LIQUIDATION) Third Defendant
AND	SKIPWITH BRIAN LOWIS TAYLER Fourth Defendant
AND	PASCALE RUTH BOLLE (AKA PASCALE RUTH BOLLE-TAYLER AND AKA PASCALE RUTH BOLLE- HAUERT Fifth Defendant

Hearing: 25 June 2009

Appearances: J Lethbridge for Plaintiff

Judgment: 25 June 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE ROBINSON**

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Solicitors:  
Grove Darlow & Partners, PO Box 2882, Auckland

[1] The plaintiff seeks to proceed with its application for summary judgment against the second defendant, X-Zeck Rentals Limited. Orders for substituted service have been made with regard to a number of the defendants and the remaining defendants are yet to be served.

[2] No defence has been filed by the second defendant.

[3] The evidence establishes the plaintiff made the advances referred to in the statement of claim to the defendants, also referred to in the statement of claim, and that those advances were guaranteed by the second defendant. I am also satisfied that there have been defaults by the principal borrowers resulting in the plaintiff being entitled to recover the balance outstanding from the second defendant. That balance includes interest on funds advanced at the rate of 8.45%. That, as I understand the evidence, is 2% above the ordinary rate chargeable at the appropriate time and, if that is the situation, then the increased rate falls within what one would expect to be liquidator damages and is not a penalty.

[4] In the circumstances, I am satisfied the second defendant can have no defence and the plaintiff is entitled to judgment for the amount claimed, plus interest thereon at 8.45%. According to the memorandum filed by counsel, the amount for which judgment is to be entered is \$840,546.71, together with interest on that amount at 8.45% p.a. from 20 January 2009 until 25 June 2009, being \$196.41 per day for 157 days, namely \$30,836.37. In addition, the plaintiff will be entitled to interest on the outstanding principal sum of \$840,546.71 at the rate of 8.45% from the date of judgment until payment.

[5] The plaintiff seeks costs on a solicitor and client basis. The agreement provides for costs to be paid on that basis. Counsel has submitted a memorandum as to the costs involved. The total costs, including disbursements and GST, are \$8289.64. however, I have some doubt as to whether the plaintiff is entitled to recover the GST component, applying the decision of Judge Faire in *Crown Money Corporation Ltd v Grasmere Estate Trust Co Ltd and Peters* CIV 2008-404-003801, decision delivered on 21 November 2008. In that decision, Judge Faire, at paragraph [7] states:

As far as GST is concerned, if the plaintiff is a registered person the GST charged to it would be off-set by an input credit and, therefore, if that supposition is correct, must be excluded. To fail to do so would lead to a double recovery by the plaintiff in respect of the GST portion of the legal costs.

[6] On the basis of that decision and on the assumption that the plaintiff, being the Bank of New Zealand, is registered for GST purposes, I am prepared to enter judgment for the costs sought less the GST component. If counsel wishes to be heard further on whether such deduction is appropriate, then counsel should submit a memorandum within 14 days as to the basis upon which the GST component is to be allowed. Failing a memorandum from counsel, I will make an order for the costs sought less the GST component. There is, of course, an order that the second defendant pay the disbursements.

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MD Robinson  
Associate Judge