

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

CIV-2009-404-7828

IN THE MATTER OF Section 143 of the Land Transfer Act 1952

BETWEEN BANK OF NEW ZEALAND
 Applicant

AND MALCOLM DUNCAN MAYER
 First Respondent

AND LJK INVESTMENTS LTD
 Second Respondent

Hearing: 3 December 2009

Appearances: Mr T J G Allan for applicant
 No appearance for respondent

Judgment: 3 December 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE

Solicitors:

Grove Darlow & Partners, P O Box 2882, Auckland – by email: tima@grovedarlow.co.nz

Copy: Mr M D Mayer, c/o 10A, 2 St Martins Lane, Auckland

[1] This matter was called 3 December 2009 in my caveats list. The respondents did not appear. Counsel for the applicant said that he could establish that the first respondent had been served by the following chain of reasoning:

- a) He had sent a copy of the proceedings to Mr Mayer at his email address;
- b) Mr Mayer sent a fax to the intending purchaser of the property which the receivers entered into an agreement to sell 2 December 2009;
- c) The receivers and those instructed by them in relation to the sale of the property have maintained confidentiality as to who the purchaser was because they were concerned that if they did not and Mr Mayer discovered the identity of the purchaser he would sabotage the arrangements;
- d) Mr Mayer could therefore have only discovered the identity of the purchaser if he had received the proceedings in which the purchaser's identity is disclosed; and the fact that Mr Mayer now knows who the purchaser is establishes that he received the emailed copy of the proceedings.

[2] I accept that Mr Mayer had the proceedings brought to his attention by means of the email service.

[3] The date when the proceedings were served on Mr Mayer by this means is not entirely clear but it was at a minimum 24 hours ago and possibly was two days ago. While I have concerns about the time period for which Mr Mayer has had notice of the proceedings, I am satisfied that given that he was advised of the date of the proceedings he could at least have come along to the Court had he wished to oppose the proceedings and if necessary sought additional time for that purpose. For that reason I conclude it is safe to proceed.

[4] I am satisfied that none of the caveats which have been filed can 'trump' the registered mortgage which the plaintiff has over the title to the property and which is the source of the authority of the receivers who arrange a mortgagee sale. There would need to have been fraud on the part of the bank if their indefeasible rights under the mortgage were to be defeated. There is no evidence of such and I would not be prepared to assume on an undefended basis that the Court should assume the same.

[5] I also accept that urgency surrounds the need to remove the caveats because the agreement for sale and purchase is due for settlement on 15 December 2009. I therefore consider, in all the circumstances, it is appropriate to make the orders sought which are sought in paragraph 1(a) of the application. The applicant will have costs on a 2B basis together with disbursements to be fixed by the Registrar.

J.P. Doogue
Associate Judge