

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

CIV 2009-404-003350

CIV 2009-404-004313

UNDER The Land Transfer Act 1952 s 145A

IN THE MATTER OF an application that caveat not lapse

BETWEEN WESTMINSTER FINANCE LIMITED
Applicant

AND MARAC FINANCE LIMITED
Respondent

Hearing: 21 August 2009

Appearances: R Hucker for the Applicant
D Vizer for the Respondent

Judgment: 21 August 2009

**JUDGMENT OF
ASSOCIATE JUDGE CHRISTIANSEN**

*This judgment was delivered by me on
21.08.09 at 2:00pm, pursuant to
Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar
Date.....*

Solicitors/Counsel:

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[1] By my judgment dated 17 August 2009 I dismissed the applicant's application to sustain its caveats. Yesterday afternoon I received the applicant's application for stay of execution of judgment. I scheduled a hearing this morning to deal with that application, to ensure that the respondent also had an opportunity to be heard upon it.

[2] I informed counsel that beyond today I would be out of Auckland and beyond next week out of the country until late in October 2009. For these reasons and due to my other commitments today, I apologised to counsel that I would not be able to give their submissions other than the briefest of consideration.

[3] Although I gave consideration to granting a stay pending receipt from or on behalf of the respondent of an undertaking to hold a sum of \$60,000 in trust pending the outcome of this appeal, I was persuaded the application should be dismissed. I was referred to and take into account those factors usually considered upon a stay application, and as identified in *Duncan v Osborne Building Limited* (1992) 6 PRNZ 85, and *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1993) 13 PRNZ 48.

[4] In overview I am satisfied that no utility at all is provided by the caveats being retained. The applicant already has the respondent's undertaking to pay any surplus proceedings from the sale of presently unsold properties over which the respondent's mortgage is secured.

[5] The four properties which were subject of the applications I heard, will clearly not provide any surplus funds at all. There is no risk to anyone therefore if my judgment has the affect only of dealing with the caveats over the four sold properties.

[6] I accept the submission that there is a greater threat posed by the potential to delay settlement of those four sold properties. If the purchasers cancel their agreements then the properties will be subject to mortgagee sale and a lesser return is likely.

[7] Overall it seems to me the balance of convenience does not favour the granting of a stay.

[8] It was not my intention by my judgment that the caveats be removed from any property other than those which were the subject of the hearing before me. Therefore I direct that my judgment not be registered in relation to the other properties until such time as they are sold.

[9] The application for stay shall be granted until but shall expire at 4:00pm on 28 August 2009. This has been done to ensure the applicant is able to pursue its stay application fresh before the Court of Appeal.

[10] Costs upon this application are reserved.

Associate Judge Christiansen