

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

CIV-2009-404-004667

BETWEEN

BANK OF NEW ZEALAND
Plaintiff

AND

DOUGLAS JOHN COWARD AND
WILLIAM JOHN GAUSDEN
Defendants

Hearing: 24 September 2009

Appearances: Jennifer Tiang for Plaintiff
P W Johan (Insolvency Practitioner) for Douglas John Coward
Douglas John Coward in person

Judgment: 24 September 2009

[ORAL] JUDGMENT OF HUGH WILLIAMS J.

- A. There will be summary judgment for the plaintiff against each of the defendants for the sum of \$582,342.81 plus interest at 9.5% per annum from 29 April 2009 until today, \$22,432.36, giving a total amount for judgment of \$604,775.17. Interest will continue to accrue on the principal amount of the judgment at 9.5% per annum from the date of judgment to the date of payment.**
- B. There will be judgment for the plaintiff against each of the defendants for solicitor and client costs in accordance with the affidavit filed, bringing the total judgment to \$611,406.83.**

Solicitors:

Grove Darlow, P O Box 2882 Shortland Street, Auckland 1140, for Bank of New Zealand
Email:

Copy for:

Peter Willem Johan, Morgan Freeman Penn, P O 911535 Victoria Street West, Auckland 1142

Email: morfrepenn@gmail.com

Douglas John Coward, P O Box 176 Whangaparaoa 0943

Email: dynasol@xtra.co.nz

Case Officer: Nilson.Geiger@justice.govt.nz

[1] This is an application by the Bank of New Zealand for summary judgment against the defendants, Messrs Coward and Gausden. They were served, respectively, on 18 and 21 August 2009.

[2] Neither has taken any formal step in opposition to the application for summary judgment but at the hearing today, Mr Johan of Morgan Freeman Penn appeared for Mr Coward (with Mr Coward in attendance) to advise the Court of a proposed compromise proceeding which is going to be put together for him. There has been no approach to the Court by Mr Gausden.

[3] The claim is based on an advance by the Bank of \$1.17m to Diamond Bay Investments Limited on 12 September 2007, secured by a Committed Cash Advance Facility ("CCAF") and a mortgage over the property at 486 Thames Coast Road, Te Puru (title SA44B/85) and secured by mortgage 6789419.2.

[4] The CCAF provided, naturally, for interest by quarterly payments and, on default, the interest rate increased to a default margin of 2% per annum. The CCAF expired on 17 March 2008 and the interest then became that of the banks revolving credit account, currently 9.5%. The advance was also secured by guarantees by each of the defendants, Messrs Coward and Gausden. The Deeds of Guarantee were in standard bank form and provided for the payment by the guarantors of costs and expenses on a solicitor-and-client basis.

[5] The CCAF fell due, its end date being 17 March 2008.

[6] The company was liquidated on 29 January 2009. Initially, demands were made by the bank on the defendants on about 5 February 2009 and later Property Law Act Notices were served and the property sold for a net \$894,569.62.

[7] The balance remaining owing after the mortgagee's sale was \$582,342.81 and it is for that sum, plus interest, that the Bank seeks judgment today.

[8] Mr Johan placed before the Court two letters, one from the Bank dated 21 September 2009 inquiring as to proposals for repayment, and the second and more important, a letter from Mr Coward to the bank of 22 September 2009.

[9] That letter said that Mr Coward currently owes \$962,665 including the amount owed to the bank, and proposes a settlement by way of a compromise for a total of \$50,000 payable at \$5000 per six months with the first payment due on 1 May 2010 and six-monthly intervals thereafter plus interest at what is described as a “nominal” rate.

[10] When that material was produced Ms Tiang for the Bank took instructions and was instructed to proceed to judgment. It was then explained to Mr Johan in Mr Coward’s presence that the formal pronouncement of judgment by this court does not impede any later compromise proposal. Once the Bank has received the formal judgment, it is then for the Bank to decide what if any action it will take in response. That will include participating in a compromise if, once it is formalized, the Bank then decides that is the appropriate course to follow. The formal entry of judgment against the defendants does not, as Mr Coward apparently feels, inexorably lead to bankruptcy. That is simply one of the actions the bank might take once judgment is entered - but it is by no means the inevitable result.

[11] In the result, because there has been no formal step taken by Mr Coward, and no step at all taken by Mr Gausden, it is appropriate that judgment be entered for the plaintiff against each of the defendants for the sum of \$582,342.81 plus interest at 9.5% per annum from 29 April 2009 until today, \$22,432.36, giving a total amount of principal and interest for judgment of \$604,775.17. Interest will continue to accrue on the principal amount of the judgment at 9.5% per annum from the date of judgment to the date of payment.

[12] In addition, there will be judgment for the plaintiff against each of the defendants for solicitor and client costs in accordance with the affidavit filed, bringing the total judgment to \$611,406.83.

.....
HUGH WILLIAMS J.