

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

**CIV-2009-409-000562**

UNDER section 200 of the Property Law Act 2007

CANTERBURY BUILDING SOCIETY  
Applicant

Hearing: 1 May 2009

Appearances: D Montgomerie for Applicant

Judgment: 1 May 2009

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**ORAL JUDGMENT OF HON. JUSTICE FRENCH**

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[1] The applicant, who is a mortgagee entitled to sell a mortgaged property, seeks an order under s200(3)(d) of the Property Law Act 2007 permitting it to purchase the property.

[2] The application is unopposed, but was adjourned from 29 April 2009 because of the need to provide the Court with further information about the price at which the applicant wishes to purchase the property. I agree with the Judge before whom the matter was first called, that such information is essential in an application of this kind.

[3] The factual background is as follows.

[4] The applicant, the Canterbury Building Society, is the mortgagee under a registered mortgage of three properties known as units 1, 16 and 17, 126 Esplanade, Kaikoura.

[5] Last year, the mortgagor defaulted on his payments and, after serving a s119 notice, the building society decided, in September 2008, to exercise its powers of sale.

[6] The mortgagor has since been adjudicated bankrupt.

[7] A valuation obtained from a registered valuer in September 2008 assessed the value of the properties as follows:

Unit 1	\$425,000
Unit 16	\$410,000
Unit 17	\$440,000
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	\$1,245,000

(all figures exclusive of GST)

[8] Since September 2008, the properties have been marketed extensively.

[9] A conditional agreement to purchase all three for the price of \$1m obtained in November 2008 lapsed, and a second agreement, with the same purchaser, but for the reduced figure of \$900,000 was cancelled.

[10] A public auction was held on 20 February 2009. Unit 1 was the only property to attract any bids, with bidding reaching \$125,000. The building society received expressions of interest in the other two units, and since the auction it has continued to provide information to interested parties.

[11] On 5 March 2009, there was an offer to purchase unit 17 at a price of \$250,000. The building society rejected that offer because it considered a figure of \$250,000 did not sufficiently reflect the fact that the unit is occupied by the manager of the complex and has income stream from the lease to the manager.

[12] The building society then decided that if continued marketing efforts during the period of an exclusive agency ending on 8 April 2009 did not elicit a reasonable offer or offers for the three properties, then it would consider purchasing them itself.

[13] It therefore filed the present application on 23 March 2009.

[14] The application was served on the mortgagor, guarantor and subsequent mortgagee. No notice of opposition has been filed by any of those parties. It appears there is no possibility of the building society recovering the full amount secured by its mortgages, even if the properties were to be sold at their market values as assessed in September 2008. There is therefore no prejudice to any subsequent mortgagees.

[15] Since the application was filed, the building society has entered into unconditional agreements for the sale and purchase of units 1 and 16.

[16] The sale of unit 16 has now been settled. The purchase price was \$195,000.

[17] The sale of unit 1 is due for settlement today. The purchase price is \$180,000.

[18] Counsel, Mr Montgomerie, informed me this morning that the deposit has been paid. In the unlikely event, however, that settlement does not occur today, the building society seeks to be allowed to purchase the property at \$150,000.

[19] As regards unit 17, the building society believes the market value of that unit is approximately \$200,000-\$250,000. However, for the reasons mentioned above, the building society is of the opinion that the value of unit 17 is in fact greater than that indicated by the market. The building society is therefore willing to purchase unit 17 at a price of \$350,000.

[20] The power conferred on the Court by s200(3)(d) of the Property Law Act is new. The legislation does not set out any criteria to which the Court is to have regard. However it would seem axiomatic that the application must be considered in the context of the mortgagee's obligations when conducting a mortgagee sale:

namely the duty to exercise the power of sale in good faith, and to obtain the best price reasonably obtainable.

[21] In an affidavit sworn in support of the application, the building society's credit manager deposes that the building society believes purchasing the properties at the prices set out above will allow it to fulfil its duty to obtain the best price reasonably obtainable.

[22] I am satisfied that this statement is well founded, and that the order sought is appropriate.

[23] The application is accordingly granted. There will be orders in the following terms:

- i) The applicant is permitted to become the purchaser at the sale of the property known as unit 17, 126 Esplanade, Kaikoura, at a purchase price of \$350,000.
- ii) There will be a further order permitting the applicant to become the purchaser of unit 1, 126 Esplanade, Kaikoura (in the event that settlement of an existing unconditional agreement for sale and purchase does not occur as a result of default on the part of the purchaser) at a purchase price of \$150,000.

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