

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

CIV 2009-409-001336

UNDER Section 200 of the Property Law Act 2007

**PROPERTYFINANCE SECURITIES
LIMITED**
Applicant

Hearing: 29 July 2009

Counsel: D Montgomerie for Applicant

Judgment: 29 July 2009

JUDGMENT OF FOGARTY J

[1] This is an application for an order pursuant to s 200 of the Property Law Act permitting the applicant to become the purchaser at the sale of a property known as Lots 1 and 3, Whangaruru Wharf Road, Whangaruru, Northland, at a price of \$1,275,000 including GST.

[2] The context is that the applicant is the registered mortgagee of the property. The indebtedness of the mortgagor is currently in excess of \$5 million. There are no other securities registered against that debt although there are personal guarantees.

[3] On 27 December 2008 the applicant obtained a valuation from Mr WAF Burgess, a registered valuer employed by DTZ Northland Limited and thus both a local valuer and employed by a firm with considerable knowledge in the area. The market value of the property at the date of valuation was assessed at \$1,700,000 and the forced sale valuation was assessed at \$1,275,000, both valuations inclusive of GST, if any.

[4] The valuation report also included valuations for the proposed subdivision of the property. Although resource consent has been approved the subdivision proposed has not progressed. The property was advertised. The applicant instructed Bayleys - Kauri Realty Limited to market the property on 9 March. The advertising began on 19 March. Bayleys expressed confidence that over the last four weeks they have made all interested parties who are looking for a property like this one in the area aware that the property would be sold on 15 March. Four parties viewed the property with Bayleys, three other parties without Bayleys; 40 property information booklets were sent out to parties enquiring. There were nine requests for terms and conditions. The advice from Bayleys was “*we have only one party indicating they will be coming to the auction*”.

[5] There was an auction held on 15 April but no bids were received. On 24 April the applicant received two offers, one for \$150,000 plus GST, the other for \$300,000 plus GST. They were not accepted. Plainly to do so would have breached the duty of the applicant to obtain the best price reasonably available.

[6] The applicant now wishes to purchase the property at the forced value figure provided on 27 December as noted above. Section 200 provides:

200 Sale by mortgagee through court

- (1) A mortgagee who is entitled to sell mortgaged property may apply to a court for assistance—
 - (a) in exercising the power of sale; or
 - (b) in completing the transfer of the property to the purchaser (if the property has already been sold by the mortgagee).
- (2) The court may make all or any of the orders specified in subsection (3) if it is satisfied that—
 - (a) there has been a default that has not been remedied or, in the case of personal property, the property is at risk; and
 - (b) the mortgagee has become entitled under the mortgage and subpart 5 to exercise a power of sale in respect of the mortgaged property.
- (3) The orders are as follows:

- (a) an order directing the sale of the whole or any part of the mortgaged property:
 - (b) an order that the sale be conducted by the mortgagee or by the Registrar:
 - (c) an order making conditions concerning all or any of the following matters:
 - (i) the advertising of the sale:
 - (ii) other marketing of the mortgaged property proposed to be sold:
 - (iii) the conditions of sale:
 - (iv) the manner in which the sale is to be conducted:
 - (d) an order permitting the mortgagee to become the purchaser at the sale otherwise than under section 196:
 - (e) an order permitting the current mortgagor or any other person entitled to redeem the mortgaged property to redeem it otherwise than under subpart 4 or section 195:
 - (f) an order vesting the property, for any estate or interest that the court thinks fit, in the purchaser (including the mortgagee if the mortgagee is the purchaser) or discharging any mortgage or other encumbrance:
 - (g) an order directing the Registrar, or, if it is more convenient, appointing a person other than the Registrar, to execute or register a transfer or assignment of the property to the purchaser (including the mortgagee if the mortgagee is the purchaser) or a discharge of any mortgage or other encumbrance:
 - (h) an order determining the priority of mortgages or other encumbrances over the property.
- (4) An order under subsection (3)(f), or a transfer, assignment, or discharge executed or registered under subsection (3)(g), has the same effect as a transfer or assignment instrument for the mortgaged property executed or registered by a mortgagee under section 183, or a mortgage discharge instrument for a mortgage duly executed or registered in accordance with section 83, as the case may be.

[7] This is a new section. It has been recently applied by French J in: *Canterbury Building Society* HC Christchurch CIV 22009-409-000562 1 May 2009. The context in that case is similar to here, namely, that the mortgagee has put the property on the market but has not achieved offers.

[8] On the face of it s 200 can be used for a mortgagee to apply to the Court for assistance prior to the first round of marketing and auction. I am satisfied, however, that s 200 can be used in situations like this after an auction has failed and after the market has been tested. But I would not want to suggest that use of s 200 in this way will become a perfunctory exercise by the High Court. Each case will depend on its facts. On these particular facts though I am satisfied that it is appropriate that this Court make an order under s 200 (3)(d) permitting the mortgagee to become the purchaser at the sale on the terms which I have set out above and which are the basis for this application.

Solicitors:
Buddle Findlay, Christchurch, for Applicant