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THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

HIDDEN J

WEDNESDAY 15 NOVEMBER 2006

013403/06 - PERPETUAL LIMITED v FIONA CAROLINE CRISTIAN

JUDGMENT re notice of motion

HIS HONOUR: The plaintiff has issued a statement of claim in this court seeking possession of a property and judgment for money outstanding on a loan contract. The defendant and her husband are said to be parties to the loan contract, which was signed on 25 August 2005. In addition, the defendant, as the registered proprietor of the relevant property, signed a mortgage on 20 September 2005 securing the amount of the loan and that mortgage contains the conventional term providing for a right of ejectment upon default.

The defendant has filed a defence which pleads the general issue but admits that no payments have ever been made under the loan contract. She has also filed a cross-claim, the effect of which is this, that the loan was negotiated through a broker but the contract which she and her husband signed does not reflect the nature of the loan which was sought. The defendant when the matter was last before me relied upon an affidavit of her husband, to which a large amount of documentary material was annexed. That has been supplemented today by further evidence on

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affidavit from the defendant herself and from the broker, Mr Hartney, all of which is consistent with the assertion that the loan contract signed was indeed not consistent with the loan that was sought. This may raise an issue as to whether the defendant has recourse against any other person or organisation arising from the circumstances in which the loan document and the mortgage came to be signed, and there may indeed be an issue as to the amount said now to be outstanding under the contract.

That said, in the circumstances, the plaintiff seeks summary judgment for possession of the property and also for judgment in the amount outstanding. As to that, however, Mr Golledge, who appears for the plaintiff, realistically acknowledged that there may be an issue about the amount and what is pressed this morning is summary judgment for possession of the property. That application is pressed upon the basis that nothing in the defence or cross-claim filed by the defendant or, indeed, in any of the evidence upon which she relies raises any triable issue in opposition to possession.

That submission, in my view, is sound. The simple fact is that a loan contract was entered into for a certain amount of principal at a certain interest rate. The mortgage was signed consistent with that loan contract and to secure repayment of the loan with interest. It is common ground that there has been default in that no

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payment has ever been made and, in those circumstances, the plaintiff is entitled to summary judgment for possession.

It is not for me to determine what is to happen about the claim for the amount outstanding or in respect of any defence or cross-claim which the defendant might have in respect of that amount. The defendant filed motions this morning seeking to join certain other parties to the proceedings. Again, it is not for me to determine the merit of those motions, nor am I in a position to determine them this morning in the present circumstances and on the limited material I have.

The defendant sought an opportunity for more time to research the circumstances of the loan and to research the relevant law in answer to the present motion. However, in light of the history of the matter, I am not prepared to allow any further adjournment. This motion has taken long enough as it is to be brought to hearing.

(Short minutes of order handed up by Mr Golledge. For submissions re the short minutes and costs see transcript page 14 line 34 to page 16 line 32.)

HIS HONOUR: I make orders in terms of paragraphs A and B of the short minutes supplied to me by counsel for the plaintiff, which I shall sign and date today, being 15 November 2006. The defendant is to pay the plaintiff's costs of the motion.

(For submissions re costs, listing the matter

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before the Registrar and matters concerning the writ see transcript page 16 line 37 to page 18 line 58)

HIS HONOUR: I direct that the matter be listed for further directions before a Registrar at 9 am on Wednesday, 29 November 2006.

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Supreme Court of New South Wales

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Facsimile Cover Sheet

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FROM *Denise Hare*

DATE *30~~th~~ / 11 / 06 (Thursday)*

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MESSAGE *ATTN: GARY KRONING/KOWSA WOODS.*
Herewith judgment - please
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Sorry for delay -

Denise
AH02

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