

STWWS 18/7/06 4.06AM

Form 2 (version 3)

Rule 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court Supreme Court of New South Wales
Division Common Law Division
List Possession List
Registry Sydney
Case number

13603/06.

TITLE OF PROCEEDINGS

First plaintiff **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
[ACN 000 431 827]
Number of plaintiffs 1
First Defendant **Fiona Caroline Cristian**
Number of Defendants 1

FILING DETAILS

Filed for **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
[ACN 000 431 827] - Plaintiff
Address Dibbs Abbott Stillman
Lawyers
ABN 84 338 278 574
Level 8 Angel Place
123 Pitt Street
SYDNEY NSW 2000
DX 101 SYDNEY
Fax: (02) 8233 9555
Tel: (02) 8233 9500
Email: Jacqueline.bruce@daslaw.com.au
Court user number 80
Solicitor's file reference: JAB/GTB/3301650

VENUE

Intended hearing venue Supreme Court of NSW
Queen's Square, Macquarie Street
SYDNEY NSW 2000

RELIEF CLAIMED

1. The Plaintiff claims:

- (a) An order that the Defendant give the Plaintiff possession of the land comprised in Certificate of Title Folio Identifier 54/755903 commonly known as 40 Warrain Crescent, Currarong in the State of New South Wales.
- (b) An order that the Plaintiff have leave to issue a Writ of Possession forthwith in respect of the land referred to in the preceding sub-paragraph.
- (c) Judgment against the Defendant in the sum of **\$713,886.82** which sum is comprised of:
 - (i) Court filing fees of \$1,318.00;
 - (ii) Service fees of \$53.00; and
 - (iii) Solicitor's costs as at date of filing of \$2,064.00;
 - (iv) Debt of \$710,451.82 owed to the Plaintiff in respect of Account No.71389870, as at 14 July 2006.
- (d) Interest on the sum referred to in sub-paragraph 1(c)(iv) as follows:-

Particulars

Interest on the sum of \$710,451.82 from 14 July 2006 until the date of Judgment, accruing at the rate of 7.0% per annum, or at such rate as varied by the Plaintiff from time to time.

- (e) Costs on an indemnity basis.
- (f) Such further or other orders as the nature of the case may require.

PLEADING AND PARTICULARS

The plaintiff relies on the following facts and assertions:

2. The Plaintiff is a body corporate entitled to sue in its corporate name and style.
3. The Defendant is the registered proprietor of the whole of the land comprised in Certificate of Title Folio Identifier 54/755903 commonly known as 40 Warrain Crescent, Currarong in the State of New South Wales ("**the Land**").
4. On or about 20 September 2005, the Defendant was the registered proprietor of the Land.
5. By mortgage dated 20 September 2005 ("**the Mortgage**"), the Defendant mortgaged to the Plaintiff all of her estate and interest in the Land. The Plaintiff craves leave to refer to the terms of the Mortgage as if same were set forth herein in full.



6. The Mortgage was registered and allocated dealing number AB812274.
7. It was a term of the Mortgage that the provisions set out in Memorandum No. 2477234 filed in the Department of Lands, Land and Property Information Division ("the **Memorandum**") are incorporated in the Mortgage.

Particulars

Mortgage, Clause D

8. It was a term of the Memorandum that the Defendant would pay to the Plaintiff on the dates agreed all money owing by the Defendant to the Plaintiff under the Mortgage or a Secured Arrangement.

Particulars

Memorandum, Clause 1.1 and 2.1

9. It was a term of the Memorandum that if the Defendant failed to pay on time all money owing by the Defendant to the Plaintiff now or in the future under the Mortgage or a Secured Arrangement, then provided notice has been given in accordance with the laws governing the exercise of power of sale as mortgagee and provided the provisions of any applicable laws relating to enforcement and the Consumer Credit Code have been complied with, then the Plaintiff can eject the Defendant or any other occupants from the Land and take possession of the Land.

Particulars

Memorandum, Clause 2.1, 5.1 and 5.2

10. A Loan Contract was executed by the Defendant on 25 August 2005 and included General Conditions document reference number MM/GC/01/05 ("**the Loan Contract**").
11. The Loan Contract is a 'Secured Arrangement' pursuant to the provisions of the Memorandum.

Particulars

Memorandum, Clause 1.1

12. On 19 September 2005 the Plaintiff made an advance of \$664,000.00 to the Defendant pursuant to the terms of the Loan Contract.
13. It was a term of the Loan Contract that the Defendant would pay to the Plaintiff interest on monies advanced to the Defendant at the rate of 6.69% per annum or at such rate as varied by the Plaintiff from time to time pursuant to the Loan Contract.



Particulars

Part 1 of the Schedule to the Loan Contract

14. It was a term of the Loan Contract that the Plaintiff was entitled to apply a default rate of interest to any amount owing under the Loan Contract that has not been paid by its due date ("the unpaid amount"), which is equal to the current variable interest rate (as varied by the Plaintiff from time to time) plus 2%, and that this default rate will continue to apply to the unpaid amount until it is paid.

Particulars

Part 1 of the Schedule to the Loan Contract

15. It was a term of the Loan Contract that the Defendant would make scheduled monthly repayments. These repayments are due monthly on the first business day of each month after the first repayment is due.

Particulars

Part 1 of the Schedule to the Loan Contract

16. It was a term of the Loan Contract that if the balance of any of the Defendant's accounts on any day exceeded the scheduled balance, then the Defendant must immediately pay the amount by which the balance exceeded the scheduled balance.

Particulars

Part 1 of the Schedule to the Loan Contract

17. In breach of the terms pleaded in paragraphs 15 and 16 above, the Defendant failed to make any repayment to the Plaintiff pursuant to the Loan Contract.
18. As at 9 March 2006, the Defendant's loan account under the Loan Contract exceeded the scheduled balance of the Loan Contract in the amount of \$22,684.96.
19. On or about 14 March 2006, the plaintiff served on the Defendant a notice pursuant to Section 57(2)(b) of the *Real Property Act, 1900*, demanding payment within 31 days of the sum of \$23,284.96. The sum demanded was the amount that the balance of the Defendant's loan account exceeded the scheduled balance of the Loan Contract, plus enforcement expenses. The notice was served by sending it by pre-paid post to the Defendant at 260 Oxford Street, Bondi Junction, being the then last known residential address of the Defendant.



- 20. On or about 14 March 2006, the plaintiff served on the Defendant a notice pursuant to Section 80 of the Consumer Credit Code, demanding payment within 31 days of the sum of \$22,684.96. The sum demanded was the amount that the balance of the Defendant's loan account exceeded the scheduled balance of the Loan Contract. The notice was served by sending it by pre-paid post to the Defendant at 260 Oxford Street, Bondi Junction, being the then last known residential address of the Defendant.
- 21. If the Defendant failed to pay the sum demanded in the notices referred to in paragraphs 19 and 20 above within 31 days, then the Plaintiff was entitled to make the balance and any other amount payable by the Defendant under the Loan Contract immediately due and payable.

Particulars

Clause 22.3 of the General Conditions of the Loan Contract

- 22. The Defendant has failed, neglected or refused to pay the plaintiff the whole of the sum demanded in the Notices, or any sum.
- 23. As at 13 July 2006, the Defendant was indebted to the Plaintiff in the amount of \$710,451.82.

SIGNATURE

Signature:



Name: Gerard Thomas Breen

*By his employed solicitor,
Craig Kerwin*

Solicitor for plaintiff

Date

14/07/06

14 JUL 2006

VERIFICATION

Name

KYLIE ARIBOD

of Perpetual Limited

Address

"Angel Place", Level 13, 123 Pitt Street, Sydney NSW 2000

Occupation

Manager

I say on oath:

- 1. I am a Manager employed by the Plaintiff and in that capacity have the authority to swear this Affidavit on its behalf.
- 2. I believe that the allegations of fact in the Statement of Claim set out above are true to the best of my knowledge, information and belief.



SWORN on 14th July 2006

At SYDNEY

Signature of deponent

Signature of witness



Name of witness

Capacity of witness

SANDRA MAHER
JUSTICE OF THE PEACE
Level 12 Angel Place
123 Pitt Street Sydney
Registration Number 9602974

PARTY DETAILS

PLAINTIFF

Details of plaintiff

Family name OR company name Perpetual Limited, formerly known as Perpetual Trustees Australia Limited

Given names OR ACN [ACN 000 431 827]

Address for service Dibbs Abbott Stillman
Lawyers
ABN 84 338 278 574
Level 8 Angel Place
123 Pitt Street
SYDNEY NSW 2000
DX 101 SYDNEY
Fax: (02) 8233 9555
Tel: (02) 8233 9500
Email: jacqueline.bruce@daslaw.com.au

Agrees to electronic service yes

Details of plaintiff's legal representative

Solicitor on the record Gerard Thomas Breen

Practising certificate number 19757

Firm Dibbs Abbott Stillman

Address Level 8 Angel Place
123 Pitt Street
SYDNEY NSW 2000
DX 101 SYDNEY

Telephone: (02) 8233 9500

Fax (02) 8233 9555

Email jacqueline.bruce@daslaw.com.au

Agrees to electronic service yes

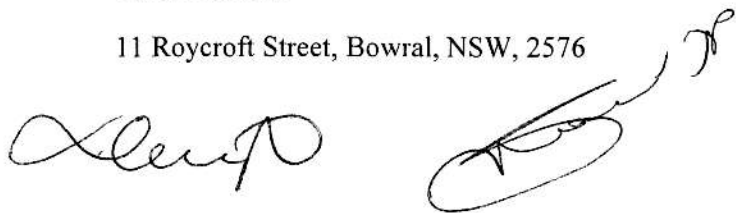
DEFENDANTS

Details of first Defendant

Family name OR company name Cristian

Given names OR ACN Fiona Caroline

Address 11 Roycroft Street, Bowral, NSW, 2576



HOW TO RESPOND

You can respond by:

- Agreeing to the claim
- Filing a defence and/or making a cross-claim against the plaintiff
- If money is being claimed, paying the plaintiff all of the money and any interest claimed
- If money is being claimed, signing an agreement with the plaintiff to pay the money

You can get further information about the forms you need to file to respond to this statement of claim from:

- The registry
- A legal practitioner
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

NOTICE TO DEFENDANT

You will be in default, if you do not file a defence within 28 days of being served with this statement of claim. The court may enter judgment against you without any further notice to you. The judgment may be for the relief sought in the statement of claim and for the plaintiff's costs for bringing these proceedings.

REGISTRY ADDRESS

Street address Queen's Square, Macquarie Street, Sydney NSW 2000

Postal address GPO Box 3, Sydney 2001

Telephone (02) 9230 8111

