IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2020-404-2508
[2022] NZHC 2128

BETWEEN	BANK OF NEW ZEALAND Plaintiff
AND	WENYUE HE Defendant

Hearing: 29 July 2022

Appearances: S Armstrong for Plaintiff
G J Thwaite for Defendant

Judgment: 25 August 2022

Reissued: 30 August 2022

JUDGMENT OF ASSOCIATE JUDGE JOHNSTON

This judgment was delivered by me on 25 August 2022 at 4.00 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Introduction

[1] This is a debt recovery claim by the plaintiff, Bank of New Zealand, against a customer, Wenyue He. After the commencement of the substantive proceeding, BNZ applied for summary judgment, with the result that it requires leave. Both BNZ's application for leave and its application for summary judgment are opposed by Mr He.

[2] BNZ is a trading bank. Mr He is a Chinese citizen with New Zealand residency.

[3] Between March 2014 and October 2016, BNZ and Mr He entered into four loan transactions, the total value of which was $3,210,000. Ms Armstrong's written submissions included a tabular description of the loans. The accuracy of this was not challenged, and it is replicated below:[1]

Loan	**Date the Loan Agreement was signed by Mr He**	**Amount**	**Comments**
2014 loan [redacted]002 (also known as Loan 1)	10 March 2014	$1,280,000	15/9/2015 – Partial repayment of $655,298.50. 4/9/2019 – Balance of 2014 loan repaid on mortgagee sale settlement date. The Bank statements record that as at this date, the interest rate for this loan was 5.9% p.a.
July 2014 loan [redacted]003	31 July 2014	$130,000	15/9/2015 – Repaid in full $127,787.69.
2015 loan [redacted]004 (also known as Loan 2)	22 January 2015	$900,000	4/9/2019 – Repaid in full on the mortgagee sale settlement date. The Bank statements record that as at this date, the interest rate for this loan was 5.3% p.a.
2016 loan [redacted]005 (also known as Loan 3)	7 October 2016	$900,000	4/9/2019 – Partial repayment on the mortgagee sale settlement date. The Bank statements record that as this date, the interest rate for this loan was 4.66% p.a.

[4] At the time of the establishment of the first of these loans, BNZ had or took security in the form of a first registered mortgage over a property owned by Mr He at 8 Ngapipi Road, Ōrākei, Auckland.

---

1 (Footnotes omitted).

[5] In November 2016, ownership of 8 Ngapipi Road was transferred from Mr He to the trustees of the Queen's Trust, a trust he appears to have settled. The trustees were Mr He and a company by the name of Bella Trustee 130708 Ltd.

[6] A little over a year later in January 2018, the Register of Companies struck Bella from the register and, as a result, Mr He once again became the sole owner of the property, this time as a trustee.

[7] By February 2018 the loans had fallen into arrears and BNZ commenced enforcement steps. The loans were brought into line briefly, but, by November 2018, they were again in arrears. In February 2019, BNZ commenced recovery action. It did so through Verofi Ltd, a company BNZ contracts to provide what it refers to as default management services.

[8] The amount recoverable, and BNZ's prima facie entitlement to recover this amount are not in issue.

[9] BNZ, through Verofi, took the orthodox steps for recovery of a secured debt:

(a) on 5 March 2019, BNZ served a notice of demand;

(b) on 11 December 2020, BNZ commenced this proceeding against Mr He for recovery of the residual debt plus interest and costs;

(c) on 1 November 2021, Mr He entered a defence and counterclaim; and

(d) on 25 March 2022, BNZ filed and served applications for:

(i) leave to apply for summary judgment;

(ii) summary judgment for an order striking out the defendant's counterclaims; and

(iii) summary judgment on its own claims.

[10] As already indicated, BNZ requires leave to apply for summary judgment because it did not make that application at the time the statement of claim was served on Mr He.[2] Its application for leave is opposed. However, the grounds on which Mr He opposes leave are the same as the grounds on which he contends that BNZ's application must fail, so that BNZ's application for leave must stand or fall with its application for summary judgment. So too must BNZ's application for an order striking out Mr He's counterclaims — BNZ will only be entitled to summary judgment on its claims if Mr He's counterclaims cannot succeed.

Summary judgment principles

[11] In the course of her submissions, Ms Armstrong set out the principles relating to summary judgment in the following way:[3]

> [20] Rule 12.2 gives the Court jurisdiction to give judgment when there is no defence or when no cause of action can succeed. The principles are well settled. The Court of Appeal in *Krukziener v Hanover Finance Limited* set them out as follows:
>
> a) The question on a summary judgment application is whether the Defendant has no defence to the claims; that is, that there is no real question to be tried; *Pemberton v Chappell* [1987] 1 NZLR 1; (1986) 1 PRNZ 183 (CA) at p 3; p 185. The Court must be left without any real doubt or uncertainty.
>
> b) The onus is on the Plaintiff, but where its evidence is sufficient to show there is no defence, the Defendant will have to respond if the application is to be defeated. *MacLean v Stewart* (1997) 11PRNZ 66 (CA).
>
> c) The Court will not normally resolve material conflicts of evidence or asses the credibility of deponents. But it need not accept uncritically evidence that is inherently lacking in credibility, as for example where the evidence is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable: in *Eng Mee Yong v Letchumanan* [1980] AC 331; [1979] 3 WLR 373 (PC), at p 341; p 381.
>
> d) In the end, the Court's assessment of the evidence is a matter of judgment. The Court may take a robust and realistic approach where the facts warrant it: *Bilbie Dymock Corp v Patel* (1987) 1 PRNZ 84 (CA).

---

2 High Court Rules 2016, r 12.4(2).

3 (Footnotes omitted)

[12] Mr Thwaite did not disagree with that analysis, and I could not improve on it.

Grounds of Opposition

[13] Mr He opposes summary judgment on the basis of his pleaded counterclaims. As I read the statement of defence and counterclaim, there are effectively three counterclaims:[4]

(a) Mr He contends that he is a consumer for the purposes of pt 1A of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and that BNZ acted in breach of its obligations under pt 1A;

(b) He alleges that BNZ failed properly to serve its notice pursuant to s 119 of the Property Law Act 2007 at the outset of the mortgagee sale process; and

(c) He alleges that, in the course of the mortgagee sale process, BNZ failed to discharge its obligation in terms of s 176 of the Property Law Act to take reasonable care to secure the best available price for the property, thus causing him loss.

[14] On those bases, Mr He says that he is entitled to claim an amount which exceeds the amount of the residual debt that BNZ is seeking to recover from him in this proceeding.

[15] I pause to mention that the development of Mr He's opposition to BNZ's application for summary judgment was obviously an iterative process, as the pleaded counterclaims were expanded upon first in the notice of opposition and again by Mr Thwaite in the course of his submissions. This is unhelpful. Neither the Court nor other parties should be placed in the position of having to deal with a proposition, the substance of which was not squarely raised in the pleadings.[5] They are an "essential

---

4 There are five pleaded causes of action, but the first, second and third are all effectively involve the same contention, that is to say failure to comply with the statutory requirements when serving the Property Law Act notice in the course of the mortgagee sale.

5 *Price Waterhouse v Fortex Group Ltd* CA179/98, 30 November 1998, at 18.

road map" for the Court and the parties.[6] An essential part of pleadings is to state the basic facts on which the claimant or counterclaimant rely so as clearly to define the issues which the defendant has to meet.[7]

[16] It would have been open to BNZ to invite the Court to disregard any inadequately pleaded contentions.[8] However, Ms Armstrong elected to meet them head on and respond. In this regard, I follow her lead.

Credit Contracts and Consumer Finance Act 2003

[17] The pleaded counterclaim is that BNZ failed to comply with its obligations under pt 1A of the CCCFA because it lent more to Mr He than the value of the security. I note that in Mr Thwaite's submissions, he acknowledged that this argument can only support a claim in relation to loans made after 6 June 2015 when pt 1A of the CCCFA came into effect.

[18] Section 9C of the CCCFA imposes obligations on all lenders. Section 9B defines the term "lender", for present purposes, as "a creditor under a consumer credit contract". A consumer credit contract requires the credit acquired by the debtor to be used for personal, domestic, or household expenses.[9] Section 12 of the CCCFA provides that "[i]nvestment by the debtor is not a personal, domestic, or household expense". Thus, the first hurdle Mr He must clear is establishing that he sought the 2016 loan for personal, as opposed to investment, purposes.

[19] The loan application itself describes the purpose of the loan sought as "Purchase Residential Property (Existing Dwelling)", though the evidence indicates that that form is used by BNZ for any loan that is to be secured by a mortgage over a dwelling. That description contrasts with that which appeared on Mr He's earlier loan applications, namely: "Purchase – Investment". Also, the second schedule to the sale and purchase agreement (SPA) for the Waikato property suggests that at least part of the property was, at the date of the agreement, being used for residential purposes.

---

6 At 17.
7 *Hopper Group Ltd v Parker* (1987) 1 PRNZ 363 (CA) at 366.
8 High Court Rule 2016, r 1.5.
9 Credit Contracts and Consumer Finance Act 2003, s 11.

[20] As against the above evidence, there is more direct evidence to the effect that the loan was for investments purposes. Schedule 2 of the SPA contains an acknowledgment by Mr He that he intended to use the property for making taxable supplies. BNZ's responsible officer who dealt with Mr He at the outset, Ms Yi Yin, has sworn an affidavit. Her evidence is that Mr He informed her that he was seeking the 2016 loan for the purpose of buying an investment property in the Waikato. There is also a BNZ diary note entry in MyLending from October 2016 that records Mr He having advised BNZ of his intention to invest in a Waikato property.

[21] On balance I am satisfied beyond any real doubt that Mr He was not using the loan "wholly or predominantly for personal, domestic, or household purposes" and, therefore, that the 2016 loan agreement was not a consumer credit contract for the purposes of the CCCFA.

[22] Even if Mr He were able to clear this hurdle, the counterclaim would fail at the next stage of the analysis.

[23] Mr He contends that the breach of CCCFA occurred by virtue of BNZ granting him a loan that exceeded the value of his security. The evidence establishes that the maximum borrowing under these loan transactions at any one time never exceeded $2,500,000, due to repayments Mr He made in 2015. Mr He's own evidence is that the market value of the property on 15 September 2016 was $3,100,000. Ms Yin's evidence is that, in processing Mr He's application for the 2016 loan, BNZ calculated that his loan to value ratio would be 76.66 per cent. Even if the Court were to accept the value of the property as Mr He asserts it in his statement of defence and counterclaim ($2,600,000 in October 2016), the amount BNZ loaned him was still covered by the value of his security. Accordingly, even if pt 1A of the CCCFA applied, it would not have the effect for which Mr He contends.

[24] That is enough to deal with the pleaded claim based on the CCCFA.

[25] There remain, however, the unpleaded contentions.

[26] Under pt 5 of the CCCFA, the Court has jurisdiction to reopen contractual arrangements where there is evidence an arrangement or conduct that is "…oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice".[10] The Supreme Court in *GE Custodians v Bartle* noted that contracts may be reopened as oppressive even in cases where a court of equity might not set aside the bargain as being unconscionable.[11] A contract or conduct may be oppressive even where the party accused of wrongdoing may be subjectively blameless because that party was simply following industry practice.[12] It is the courts' obligation to set the standard, not the industry.[13]

[27] In his notice of opposition, Mr He says that BNZ's conduct was oppressive in terms of pt 5 of the Act, thus entitling the Court to grant him relief by reopening the contract or otherwise. This assertion is particularised in the following terms:

> (i) the loan contract is oppressive, because when it advanced the funds, Applicant's own records gave cause to doubt Respondent's ability to fund the relevant loan(s); or
>
> (ii) Applicant has exercised a right of power conferred by the loan contract in an oppressive matter, in:
>
> - advancing the funds, when Applicant's own records gave cause to doubt Respondent's ability to fund the relevant loan(s); and/or
>
> - enforcing its rights as mortgagee, when it did not improve the reasonably foreseeable sale price because it did not obtain access to the interior of the property, by means of taking possession or otherwise.

[28] There appear to me to be serious difficulties with this contention.

[29] For a start, in contrast to the way in which the point is put in Mr He's notice of opposition, when the argument was developed on Mr He's behalf by Mr Thwaite, it was put in these terms:

---

10 Section 118.
11 *GE Custodians v Bartle* [2010] NZSC 146, [2011] 2 NZLR 31 at [46].
12 At [46].
13 At [46].

> Under the Consumer Finance and Credit Contracts Act 2003 Plaintiff should not have advanced the funds to Defendant, as he was a *consumer* in terms of s 11, 12 and 13 of the Act, and subsequent events have shown that he did not have the ability to fund the loan to buy the property in Orakei. Hence he is entitled to relief under Part 5 of the Act, of a nature to be determined at trial.

[30] The implication in the notice of opposition is that BNZ's records illustrated to it at the time of the original loan that Mr He did not have the necessary financial wherewithal to service the loan, whereas Mr Thwaite's argument proceeded on the basis that that only became evident after the default. The Court was not referred to any evidence indicating that BNZ knew or ought to have known that Mr He's financial position was inadequate to support the loans. On the contrary, the evidence indicates that Mr He was perfectly capable of funding these loans when they were granted. BNZ's evidence is that the value of Mr He's security was at all times more than the value of the lending. BNZ reviewed Mr He's annual income of $538,329 and Chinese bank account balance, and concluded that he appeared to be financially stable.

[31] In the end, in my assessment, the evidence falls well short of supporting a finding of oppressiveness in relation to either the loan contract or BNZ's conduct for the purposes of pt 5 of the CCCFA.

[32] The second point identified in the notice of opposition relates to the mortgagee sale process and can be dealt with when that aspect of the case is addressed.

Property Law Act

Effective Service

[33] As already indicated, Mr He's pleaded counterclaims relating to the mortgagee sale process are repetitive. His first, second and third counterclaims all allege that BNZ did not effect service of the demand in the way required by the Property Law Act on Mr He before proceeding with the mortgagee sale. This core allegation is pleaded as a breach of contract (first counterclaim), a tort (second counterclaim) and a breach of statutory duty (third counterclaim). They all come down to the same thing, namely that BNZ did not comply with its statutory obligations as to service.

[34] There is no suggestion that BNZ's s 119 notice was in any way defective. Both counsel focused exclusively on the question whether BNZ had served its s 119 notice in accordance with pt 7 of the Property Law Act.

[35] For BNZ to effect service of the s 119 notice on Mr He, it needed to comply with the following requrements prescribed by the Property Law Act:

(a) Section 353 requires the s 119 notice to be served on "an individual person in a manner provided for in section 359".

(b) Section 355(2) of the Property Law Act provides that, in cases where a person is out of New Zealand, a s 119 notice "may be given to, or served on, an agent in New Zealand of the person". The evidence is clear that when BNZ came to serve its s 119 notice on 3 July 2018, Mr He was not resident in New Zealand and so BNZ was entitled to serve the notice on an agent.

(c) Section 358 defines agent in orthodox terms as a person who "has actual or ostensible authority to receive, on behalf of that person … a notice, cross notice or other document required or authorised to be given or served by a provision of this Act". At the time that the parties entered into the first transaction in March 2014, Mr He was not living in this country. In those circumstances, BNZ required that Mr He nominate an agent for service. This was done pursuant to cl 9.2.4 of that loan agreement. Thus the evidence establishes Mr Yuan had ostensible, and in all probability had actual, authority to receive the s 119 notice.

(d) Section 359 provides that the document is given to, or served on, an individual person when it is "received by that person in accordance with section 360". Section 360 deems a document to be received when it is handed to, and accepted by, that person. The evidence here is that Mr Yuan accepted service of the documents personally.

[36] Mr Thwaite submitted that s 359 does not allow for personal service upon a person's agent. However, s 359 applies to service on "an individual person (including an individual person referred to in section 355)". By virtue of this cross-reference, the Property Law Act allows for personal service upon an agent. I can see no flaw in the process followed by BNZ and consider the s 119 notice was effectively served on Mr Yuan as Mr He's nominated agent.

[37] In addition to the pleaded contention that service on Mr Yuan was not effective service, Mr Thwaite argued two other points.

[38] The first was that, because there were changes in ownership of the property over which BNZ held the security (from, it will be recalled, Mr He in his personal capacity to Mr He and Bella as trustees of the Queens Trust and later to Mr He as the sole trustee), the notice ought to have been served on both Mr He and Bella.

[39] I reject that submission. As already said, by the time BNZ came to serve its s 119 notice, Mr He was the sole trustee of the Queen's Trust. In those circumstances, BNZ's obligation was to serve Mr He in his capacity as the trustee. I see no reason why the relationship of principal and agent as between Mr He and Mr Yuan would have been revoked or altered in any way by the change of ownership. It is true that at the time the agency arrangement was first established, Mr He was identifying Mr Yuan as his agent to receive documentation in his personal capacity. But it seems to me that in appointing Mr Yuan as his agent without qualification, Mr He was representing to BNZ that Mr Yuan was authorised to accept service of documentation for him in any capacity.

[40] The second unpleaded point advanced by Mr Thwaite concerned whether BNZ actually delivered the s 119 notice to Mr Yuan. These questions were only signalled to BNZ in Mr Thwaite's submissions. In response, BNZ filed affidavit evidence confirming service on Mr Yuan. Ironically, Mr He objected to the Court taking in that late evidence.

[41] Given Mr He's introduction of new arguments by way of submission that were not signalled at any earlier stage in the proceeding, I reject the contention that the

Court should not receive BNZ's evidence. I accept the evidence of the deponents in question.

[42] I am satisfied that BNZ effected proper service of its s 119 notice.

Sale at undervalue

[43] In his fourth pleaded counterclaim, Mr He alleges that BNZ breached the duty it owed to him pursuant to s 176 of the Property Law Act, which provides:

> (1) A mortgagee who exercises a power to sell mortgaged property, including exercise of the power through the Registrar under s 187, or through a court under s 200, owes a duty of reasonable care to the following persons to obtain the best price reasonably obtainable at the time of sale:
>
> (i) The current mortgagor:
>
> …

[44] The leading case in relation to s 176 is *Apple Fields Ltd v Damesh Holdings Ltd.*[14] That judgment was upheld on appeal to the Privy Council.[15] The Court of Appeal, there, said that the purpose of the predecessor to s 176 was to protect those to whom a mortgagee owed a duty of care in the absence of any other incentive for a mortgagee selling the property to obtain the full economic value in that sale over and above the sum which will clear the mortgage.[16] In short, the Court of Appeal accepted the provision was directed at ensuring that the best price reasonably obtainable was achieved, but that did not alter the mortgagee's entitlement to give preference to its own interests in deciding whether or not to sell.[17] The Court said that what constitutes reasonable care will turn on the facts of the case.[18]

[45] The Court of Appeal in *Long v ANZ National Bank Limited* discussed the relevant principles in assessing whether a mortgagee has breached its statutory obligations under s 176 and its predecessor:[19]

---

14 *Apple Fields Limited v Damesh Holdings Limited* [2001] 2 NZLR 586 (CA).
15 *Apple Fields Ltd v Damesh Holdings Ltd* [2003] UKPC 54, [2004] 1 NZLR 721.
16 *Apple Fields Limited v Damesh Holdings Limited,* above n 14, at [1].
17 At [49].
18 At [50].
19 *Long v ANZ National Bank Limited* [2012] NZCA 132 at [21].

(a) The statutory obligations do not obtain the best price reasonably obtainable, but to take reasonable care to obtain the best price reasonably obtainable. That price might not necessarily be obtained.

(b) That when the property is sold in a forced sale, such as at a mortgagee sale, it is likely to sell at a substantial discount from the market value that the property would achieve in a sale undertaken by an owner not under financial pressure to sell.

(c) The evaluations lose much of their significance if reasonable care is taken, there has been no properly advertised and conducted auction, and the property has been sold at auction or by negotiation after the auction.

(d) What constitutes reasonable care will always turn on the fact of the case. The steps taken by the mortgagee in fulfilling the statutory duty have to be looked at in the round.

(e) In considering the reasonableness of the care taken, the Court should be slow to second guess the actions of a mortgagee acting on apparently sound professional advice.

[46] As to the particulars of the breach, Mr He pleads:

(a) On 8 August 2019, the fair market value of the property was $2,600,000.

(b) BNZ sold the property for $2,010,000.

[47] This argument is developed in his notice of opposition. He identifies that one of his criticisms – presumably the basis upon which BNZ is said not to have taken reasonable care – is that it did not take all necessary steps to obtain access to the property, so as to enable it to present it in its best light. Mr Thwaite, in the course of his submissions, explored this further by suggesting that BNZ may have been obliged to exercise its contractual right to go into possession of the property and evict the sitting tenant, so that the interior of the property could be shown to prospective buyers. Mr Thwaite emphasised correctly, that it would have been open to BNZ to elect to go into possession of the property.

[48] Ms Armstrong submitted that the evidence establishes BNZ complied with its statutory duty. She pointed out that with a total debt of $2.3 million, BNZ had every incentive to sell the property for its full value. It retained a reputable firm of real estate

agents, Barfoot and Thompson, to market the property. The Barfoot and Thompson representative involved, Mr Davis, was an experienced agent. Relying on his advice, BNZ adopted a four-week marketing and tender sale process. Mr Davis had estimated that the market value of the property under normal circumstances would be in the order of $2.5 million, but that the mortgagee sale value was likely to be closer to $2.1 million. Further, Mr Davis took a hands-on role throughout the process, and did everything within his power to obtain access to the property. Following the four-week process overseen by Mr Davis, he advised that a mortgagee sale range of $2 million may need to be considered to achieve a sale. The highest bid in the initial tender process was $1,915,000. Thus Ms Armstrong submitted that the subsequent sale for $2,010,000 was a satisfactory result.

[49] In response to the submission that BNZ ought to have taken steps to access the property, Ms Armstrong emphasised that, on several occasions during the sales period, Verofi, on behalf of BNZ, wrote both to Mr He and his tenant seeking cooperation to allow Barfoot and Thompson agents to have access to the property. She also submitted, tellingly in my view, that Mr He cannot complain about the lack of access to the property, when he chose not to engage with those requests as the evidence suggests.

[50] In my view, Mr He's contention that BNZ breached its statutory duty has no serious prospect of suceeding. While BNZ did not obtain the fair market value of the property, that is not what s 176 of the Property Law Act requires. Rather it requires the mortgagee to take reasonable care to obtain the best price reasonably obtainable.

[51] In *Public Trust v Ottow,* this Court discussed the steps a mortgagee might take indicating it had made reasonable efforts to obtain the best price:[20]

> (a) The appointment of a reputable real estate agent to market the property.
>
> (b) Obtaining a valuation report from an experienced valuer as a guide to what could reasonably be expected for the property.
>
> (c) Marketing over a reasonably long period of time.

---

20 *Public Trust v Ottow* (2010) 10 NZCPR 879 (HC) at [31]

(d) An extensive advertising and promotional campaign.

(e) A properly conducted auction.

(f) A sale price that, given all the circumstances, can be reconciled with expert opinion as to value.

[52] BNZ appointed Barfoot and Thompson to market the property. It received a valuation report from Opteon New Zealand Ltd (Opteon) which provided a minimum recommended selling price of $2,100,000. I consider that it was reasonable for BNZ to follow Mr Davis' advice with respect to the length of time needed to market the property. Further, after a properly conducted tender process, and in light of Mr Davis' subsequent advice, I consider that the final sale price can be reconciled with Opteon's initial valuation.

[53] In these circumstances, I do not consider BNZ was required to take further steps to gain access to the property. Mr He chose not to engage with the requests made by Verofi on behalf of BNZ for access. Therefore, it was not possible for BNZ to gain access by agreement. In my assessment, it would not be reasonable to expect BNZ to incur the not inconsiderable additional cost and suffer the further delay that would have resulted from exercising the right of possession. As in *Bank of New Zealand v Taylor,* BNZ was not under any obligation to obtain orders giving it possession of the property.[21]

[54] In the end, I am satisfied that BNZ is able to demonstrate that Mr He does not have a reasonably arguable counterclaim.

Quantum

[55] Ms Armstrong submits that a judgment should be entered against Mr He for the balance of the unpaid debt, that being $493,729.73, along with costs and interest.

[56] Mr Thwaite made no submissions in relation to quantum.

---

[21] *Bank of New Zealand v Taylor* [2013] NZHC 2848 at [59].

Conclusion

[57] On the above bases my conclusions are that:

(a) BNZ is entitled to summary judgment against Mr He in the sum of $493,729.73;

(b) BNZ is entitled to interest on that sum at the default interest rate from 12 September 2019; and

(c) as to costs, my preliminary view is that these should follow the event in the usual way and that BNZ is entitled to costs on a 2B basis. However, as I have not heard from counsel on costs, I reserve them. If counsel are unable to settle costs, as I would expect them to do, they may file memoranda and I will deal with them on the papers.

[58] There will be orders accordingly.

Associate Judge Johnston

Solicitors:
Sanderson Weir Ltd, Auckland for plaintiff
Millennium Law, Auckland for defendant