

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CIV-2020-409-143
[2020] NZHC 655**

IN THE MATTER OF An application for interim injunction
 restraining AMFL LIMITED from
 advertising for sale, selling, disposing or
 otherwise dealing with the property
 (contained in Certificate of Title MD/1116,
 Legal Description Lot 1, Deposited
 Plan 8221) (the “Mortgaged land”) or any
 part thereof.

UNDER Rule 7.53 of the High Court Rules and the
 High Court’s inherent jurisdiction

BETWEEN SIMON LYDALL SAVILL
 Applicant

AND AMFL LIMITED
 Respondent

Hearing: 25 March 2020
 (On the papers)

Counsel: C J Cousins and D J Ballantyne for the Applicant

Judgment: 25 March 2020

JUDGMENT OF JUSTICE DUNNINGHAM

This judgment was delivered by me on 25 March 2020 at 5.30pm
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar
25 March 2020

[1] I have received an urgent without notice interlocutory application for interim injunction to stop a mortgagee sale proceeding in respect of mortgaged land located in Kumutoto Bay in the Marlborough Sounds being Lot 1, Deposited Plan 8221, Certificate of Title MD/1116 (“the Mortgaged Land”). It is currently being marketed for sale by Bayleys Marlborough.

[2] Time pressures mean I cannot outline the details of the application. Suffice to say the applicant raises a number of issues which the applicant says should preclude AMFL Ltd (“AMFL”) proceeding with the mortgagee auction on 3 April 2020. It says there are serious issues to be tried in that AMFL:

- (a) cannot exercise any power to sell the Mortgaged Land as no valid notice has been given to the applicant pursuant to s 118 Property Law Act 2007;
- (b) cannot exercise any power to sell the Mortgaged Land as no valid notice has been given to the applicant pursuant to s 119 and s 120 Property Law Act 2007 and the applicant has been materially prejudiced;
- (c) has breached its statutory duty of reasonable care to the applicant to obtain the best price reasonably obtainable as at the time of sale under s 176 Property Law Act 2007;
- (d) has failed in its common law duty to:
 - (i) take reasonable precautions to obtain a proper price;
 - (ii) use its mortgagee powers for a proper purpose; and
 - (iii) not act in a manner which unfairly prejudices or wilfully and recklessly sacrifices the interests of the applicant;
- (e) continues to market the property for sale by mortgagee auction in circumstances where New Zealand’s COVIC-19 alert level is set to increase to Level 4 at midnight, 25 March 2020 and, as a result, the

applicant, people or person(s) interested in attending the auction, Bayleys Marlborough, AMFL (as providers of non-essential services) will not be able to attend the auction without breaching the restrictions imposed by Level 4 of the COVID-19 Alert System.

[3] It is clear from the correspondence that some of these allegations are strongly disputed. However, I consider one point is unquestionably live. AMFL's lawyers, on 17 March 2020 sought keys to the property to enable viewings, noting that they may well lead to a better sale outcome which they said "is in both clients' respective interests". Not only can that not occur but, in the current circumstances where the COVID-19 Alert Level has been raised to Level 4, it is impossible to see how a mortgagee sale could be held which would obtain the best price reasonably obtainable as parties can neither view the property nor attend the auction.

[4] Given the application has been accompanied by the standard undertaking as to damages and there is nothing to indicate that the mortgagee would suffer irremediable loss if the sale was deferred, I grant the application on the terms sought.

[5] The application is to be served on the lawyers identified for Bayleys and AMFL as soon as can practicably be achieved.

[6] Leave is reserved to the applicant and the affected parties to revert to the Court should further orders be necessary. However, it is anticipated that substantive proceedings, along with an application for directions as to service, will be filed as soon as practicable.

Justice Dunningham

Solicitors:
Canterbury Legal, Christchurch

Copy to counsel:
D J Ballantyne, Barrister, Christchurch