

IN THE SUPREME COURT OF NEW ZEALAND

SC 87/2011  
[2011] NZSC 121

BETWEEN	GARY FRANCIS HADDON Applicant
AND	G E CUSTODIANS First Respondent
AND	BARBARA GALE HADDON AND BARBARA GALE HADDON IN HER CAPACITY AS TRUSTEE OF THE HADDON FAMILY TRUST Second Respondents

Court: Elias CJ, McGrath and William Young JJ

Counsel: C S Henry for Applicant  
E M S Cox for First Respondent

Judgment: 6 October 2011

---

JUDGMENT OF THE COURT

---

**The application for leave to appeal is dismissed with costs to the first respondent of \$2,500.**

**REASONS**

[1] This application for leave to appeal is brought by a mortgagor in default under a mortgage over his family home. The respondent finance company is mortgagee. The applicant brought this proceeding seeking to set aside the mortgage. In the High Court<sup>1</sup> an Associate Judge gave summary judgment in favour of the first respondent and dismissed the claim. The Court of Appeal<sup>2</sup> upheld that decision.

[2] The present application seeks to raise grounds for a further appeal under three main heads. First, there is a challenge to the finding of the Court of Appeal that the contract was not a credit contract, giving rise to obligations of disclosure that the

---

<sup>1</sup> *GE Custodians v Haddon* HC Auckland CIV-2009-404-6464, 2 July 2010.

<sup>2</sup> *Haddon v GE Custodians* [2011] NZCA 335.

applicant says were breached. We are, however, satisfied that no arguable issue meeting the criteria for leave to appeal arises from the Court of Appeal's reasoning. That is also the position in respect of the complaint that the Court has allowed the first respondent to contract out of the Act.

[3] Secondly, the applicant wishes to argue that the first respondent's conduct was oppressive. It was not said that the terms of the loan were extortionate, nor that the first respondent induced the applicant to enter the transaction. Rather the argument is that the first respondent was aware that the loan would increase the applicant's already extensive indebtedness. The applicant also says that the first respondent was aware that the borrowers did not receive independent legal advice and was put on inquiry as to their lack of means to meet the mortgage outgoings. In the Court of Appeal the submissions on oppression failed on the facts. The Court of Appeal held the first respondent had reason to be satisfied about the capacity of the parties to service the loan. They had also been apprised of the risks involved. Overall, we are satisfied no question of public importance arises. Nor does any apparent miscarriage of justice. Any appeal would simply be a further factual inquiry into the argument over oppressive conduct.

[4] That leaves as the final question the applicant's contention that it should be entitled to discovery before facing a summary judgment application. Having regard to the provisions of the legislation, we do not see that in the circumstances of a case where the loan was advanced at the borrowers' initiative, and no question of inducement or misrepresentation arises, that is a necessary or appropriate course.

[5] Accordingly we dismiss the applications for leave to appeal and for stay of execution of the Court of Appeal's judgment.

Solicitors:  
Witten-Hannah Howard, Takapuna for Applicant  
Gibson Sheat, Lower Hutt for First Respondent