



Supreme Court of New Zealand

3 July 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**Westpac New Zealand Ltd v Alan John Clark
(SC 67/2008) [2009] NZSC 73**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Westpac New Zealand Ltd claimed against a solicitor whom it had instructed in relation to the taking of a mortgage security that he caused it loss by negligently delaying to register the mortgage under the Land Transfer Act 1952. Unbeknown to Westpac and Mr Clark the “all obligations” mortgage, purportedly given by the registered proprietor, was a forgery done by someone pretending to be the registered proprietor. If the mortgage had been registered in these circumstances Westpac would have had an indefeasible title as mortgagee. By the time Mr Clark presented the mortgage for registration a Registrar’s caveat prevented registration from occurring.

The terms of Westpac's advance made to the impostor were recorded not in the mortgage itself but in an unregistered loan contract which was also a forgery and therefore a nullity. The Court of Appeal determined that in these circumstances, whilst the registered mortgage provided a valid security to Westpac, no moneys were thereby secured and accordingly Mr Clark's negligence caused the bank no loss.

The Supreme Court has unanimously confirmed this view, holding that although the loan contract was incorporated by reference into the registered mortgage, on a proper interpretation of the mortgage it did not encompass an advance made pursuant to an unregistered document which was not signed or authorised by the registered proprietor.

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