



SUPREME COURT OF NEW ZEALAND | TE KŌTI MANA NUI O AOTEAROA

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ANZ BANK NEW ZEALAND LTD v BUSHLINE TRUSTEES LTD

(SC 64/2019) [2020] NZSC 71

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 Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Introduction

In April 2008, the appellant, ANZ Bank New Zealand Ltd (ANZ), entered into a loan agreement with the first respondents, the trustees of the two Bushline trusts (together known as Bushline). Under the loan agreement, ANZ advanced \$19.47 million to Bushline for a term of 12 months. The interest rate was a floating rate (known as BKBM) plus a margin of 0.7 per cent. The interest rate clause stated that the 0.7 per cent margin was “reviewable at any time”.

Following the onset of the global financial crisis, ANZ exercised its right to increase Bushline’s margin under the loan. Bushline alleged that this was contrary to a representation made, or undertaking given, by ANZ prior to signing the loan agreement that the 0.7 per cent margin would be fixed for five years. Bushline also made a number of other allegations against ANZ. These were dealt with in both the High Court and Court of Appeal but were resolved between the parties before the hearing in the Supreme Court.

Bushline’s claim that ANZ had agreed to fix the 0.7 per cent margin for five years failed in the High Court. The High Court Judge found that there was no such agreement and no representation to that effect. Bushline successfully appealed to the Court of Appeal. The Court of Appeal held that there was an agreement that ANZ would fix Bushline’s margin for five years. The parties had signed a loan

agreement that said the margin could be reviewed at any time and included a clause to the effect that the written agreement was the entire agreement between the parties. ANZ argued the entire agreement clause prevented the court from giving effect to any oral agreement entered into prior to the written agreement. The Court of Appeal rejected this, finding that it would be fair and reasonable for the oral agreement to be conclusive between the parties. It also found that ANZ's defence that Bushline's claim was made out of time failed.

ANZ was granted leave to appeal to the Supreme Court. The issues on appeal were:

- whether ANZ made a representation or gave an undertaking that the 0.7 per cent margin would be fixed for five years;
- if it did, whether the entire agreement provision prevented the Court from giving effect to that representation or undertaking; and
- if not, whether Bushline's claim was made out of time.

Background

The two Bushline trusts together hold a substantial dairy farming operation in Taranaki. The dairy farming operation is run by Mr and Mrs Coomey. At the time of the April 2008 loan agreement, each of Mr and Mrs Coomey was a trustee of one of the Bushline trusts. Their lawyer and accountant were professional trustees of both trusts.

The context of the alleged undertaking or agreement to fix the margin at 0.7 per cent for five years was the purchase by Bushline of a new farm. Bushline was one of ANZ's largest customers in the region, and at the time of the purchase it was considering refinancing with another bank. ANZ wished to retain the Bushline business.

Mr and Mrs Coomey met with two ANZ representatives on 18 and 19 March 2008. The Coomeys say that at those meetings, they told the ANZ representatives that ASB Bank (ASB) had offered to fix their margin at 0.65 per cent for five years. They say that in response, the ANZ representatives offered a margin of 0.7 per cent fixed for five years, which they accepted. ANZ's case was that the ANZ representatives had agreed to a margin of 0.7 per cent, but not to fix that margin for five years.

The Supreme Court's decision

The Supreme Court has unanimously allowed ANZ's appeal. The Court considered that the evidence did not establish on the balance of probabilities that there was an agreement between ANZ and Bushline that ANZ would fix the 0.7 per cent margin for five years.

The high point of Bushline's case was the concession by one of the ANZ representatives that at the 18/19 March meetings Mr Coomey told him that ASB's competing offer involved fixing Bushline's margin for five years. But the ANZ representative was not asked in cross-examination whether he agreed, on ANZ's behalf, that Bushline's margin would be fixed for five years.

There were also other indications that there was no agreement to fix Bushline's margin at 0.7 per cent for five years. The professional trustees of the Bushline trusts were unaware of any representation or undertaking that the 0.7 per cent margin would be fixed for five years. The evidence of the ASB representative was that ASB did not offer to fix Bushline's margin for five years. In addition, Bushline did not claim that there was any agreement by ANZ to fix the margin for five years until its third statement of claim filed in September 2016.

As the Court found no representation was made or oral agreement reached that the margin would be fixed, it was not necessary for it to determine whether the Court of Appeal was correct to find it was fair and reasonable that any such representation or agreement should be conclusive between the parties despite the entire agreement clause. Nor was it necessary to address whether Bushline's claim was time-barred.

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