

### NEWSLETTER

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### **The Small Print in a Mortgage Often Contains Technical Events of Default That Can Lead to the Bank Taking Action and Even Selling Property... >>**

A recent case illustrates that borrowers should be very careful not to breach terms of a mortgage that appear to be only technical in nature.

A company, Lest We Forget Pty Ltd, had been de-registered and then re-registered. Also a guarantor of the debts of the company was having his assets seized under the Criminal Assets Recovery Act and because of that, the bank considered that there had been a material adverse change affecting the assets or financial condition of someone who had given security.

Both of these circumstances gave rise to defaults as defined in the mortgage document. Any default, including what might appear to be technical ones, permits the bank to take action for recovery of loan money that may result in the sale of the property.

Westpac prepared a document appointing Stephen Parbury and Mark Robinson as agents to sell the property. In the Deed that appointed them, Westpac said that it was doing this as mortgagee in possession of the properties.

The company went to Court to seek an injunction to stop the sale of property on the basis that the bank was not the mortgagee in possession.

The Judge found that even though the Deed was probably wrong, there was no point in stopping the sale because the defaults that had occurred, even though of a technical nature, were breaches of the agreement that had been made between the company and the bank.

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The Judge took a practical approach and said that there was no purpose in stopping the bank selling the properties because they could simply issue a new Deed of Appointment of Agents that was correct. He said that he would be surprised if the bank did not issue a new appointment deed and get the appointment of the agents correct. The Judge allowed the sale to proceed because there had been a default of the mortgage by the borrower.

>> Professional advice should be sought before applying the information in this newsletter to particular circumstances.

>> We hope that our newsletters are of interest to you. If you wish a particular topic examined, please let us know.

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