Jackson Smith solicitors

Newsletter

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High Interest Rates Unconscionable

Readers of this newsletter will remember a number of items that dealt with unconscionable or unfair arrangements that have been examined by the courts. Examples are the item on Unfair Business Contracts in volume 2, issue 2 and the item in the June 1999 newsletter.

The Queensland Supreme Court, in the case Planet Securities Unit Trust v Dalrymple [1999] QCS 204 (31 August 1999) examined a case involving high interest rates and the extent to which they were so unconscionable that the arrangement should be set aside. The borrowers took an advance of $70,588 from Planet Securities Unit Trust for a term of one month. A registered third mortgage was provided as security. The interest rate was 20% per month reducing to 15% per month if the debt was repaid on time. If the debt was not repaid the unpaid interest was to be capitalised and interest charged on the new total.

The loan was not repaid and within two years – at the time of the trial – the amount claimed by the lender was $3,247,407.07. The lender sought to recover the amount and the borrower counterclaimed on the basis that the loan was unconscionable and contrary to the Trade Practices Act.

Agreement to pay interest on capitalized interest affronted ordinary minimum standards of fair dealing.

Mr Dalrymple, one of the borrowers, was an experienced business person and both he and his wife, at the time of the loan, were advised by their own solicitor. The evidence showed that this type of loan was not unusual in urgent or desperate situations.

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His Honour Mr Justice Shepherdson said that he had to look at the end result of the transaction to decide whether or not it affronted ordinary minimum standards of fair dealing. He said that in his view the insertion in the agreement to pay interest on unpaid interest took advantage of the borrower's special vulnerability.

There was evidence before His Honour that there was urgent need for a loan of $60,000. He said that the special clause to capitalising interest was unreasonable and repressive to the extent that it affronted ordinary minimum standards of fair dealing.

His Honour varied the agreement to provide an interest rate of 15% per annum and deleted the provision for capitalisation of unpaid interest. The end result was an obligation on the borrower to pay $292,936.

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.