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SOLICITORS

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Hundreds of Thousands of Dollars May Be Lost Because of Lack of Clear Communication with the Bank >>

Mr Dennis Hadfield purchased land near Wyong in 1978 and mortgaged it to the Commonwealth Bank of Australia in 1986 to secure a loan. Mr Hadfield defaulted on his loan and eventually in 1994 the bank sold the land.

After Mr Hadfield defaulted on his bank loan he tried to refinance. He found that the valuation was not strong enough for him to borrow sufficient money to pay out the bank.

Mr Hadfield then decided that he would be better off by subdividing the land into two lots and selling each lot separately. There would have been enough from the sale of one lot to pay out the bank.

He could have re-established himself on the second lot or sold that and had a start with a new enterprise.

Mr Hadfield engaged a surveyor and prepared a plan of subdivision.

While this work was being done he spoke to a real estate agent about possible buyers. Indications were given to him about the prices that he could obtain.

Mr Hadfield believed that he was doing his best to keep the bank informed at all times.

The bank arranged for a number of Writs to be issued to evict Mr Hadfield but delayed them presumably because it believed that Mr Hadfield might raise sufficient money to pay them out. Eventually the bank decided not to wait and sold the land as one lot and not as subdivided land.

After the bank's sale, there was about $40,000 owing by Mr Hadfield to the bank. The only thing left to be done to finish the subdivision was for the bank to consent to the plan of subdivision (because it held the mortgage), for the registration of the plan at the Land Titles Office to be finalised, and then for the sale of the two lots.

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Initially a Judge who heard the case found in Mr Hadfield's favour saying that the bank had breached its duty to act with good faith and not to recklessly sacrifice the interests of Mr Hadfield and an accounting had to occur to work out Mr Hadfield's damage.

The bank appealed and the Judges of the Court of Appeal took a very different view. They said that the bank's duty to act with good faith did not arise because Mr Hadfield did not ask the bank in the clearest terms for its help.

Mr Hadfield had also complained about the way the property was advertised arguing that the area was not accurately stated and that all of the possible uses of the land were not set out.

While the Trial judge found that the bank had breached its duty in this regard, the Court of Appeal said that the bank had not acted with a lack of good faith and had done all that they were required to do.

Mr Hadfield is applying to the High Court and will ask that Court to decide on the duty a bank has when selling a borrower's property.

The clear lesson however is that strong and clear communication with the bank may save a great deal of difficulty and expense for a 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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