

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2020-404-001831
[2020] NZHC 3110**

BETWEEN

NATION LAND ASSETS LIMITED
Plaintiff

AND

WAIWERA HEIGHTS COUNTRY CLUB
LIMITED
First Defendant

CAROLINE ZHAO
Second Defendant

NEW ZEALAND ASIA TRUSTEES
LIMITED
Third Defendant

NZ ASIA INVESTMENT TRUSTEES
LIMITED
Fourth Defendant

Hearing: 24 November 2020

Appearances: A W Johnson for Plaintiff
No appearance for Defendants

Judgment: 24 November 2020

**ORAL JUDGMENT OF VENNING J
Summary Judgment**

Solicitors: Martelli McKegg, Auckland

[1] This is an application for summary judgment. Essentially it is a debt collection exercise.

[2] On 31 January 2019 the plaintiff entered a loan agreement pursuant to which it agreed to advance to the first defendant, Waiwera Heights Country Club Limited, the sum of USD 1 million at 11 per cent per annum, with a default interest rate of 24 per cent per annum above that rate. The loan was repayable 12 months after 1 February 2019.

[3] Caroline Zhao, New Zealand Asia Trustees Ltd and NZ Asia Investment Trustees Ltd, the second, third and fourth defendants, entered the loan agreement as guarantors. The plaintiff company took mortgage security over the plaintiff owned by the first defendant. The guarantees of the second to fourth defendants were supported by a deed of guarantee and indemnity executed by the defendants on 31 January 2019.

[4] In breach of the agreement the first defendant failed to repay the principal sum when due on 1 February 2020. Interest has not been paid since that date either.

[5] On 24 February 2020 the plaintiff issued a notice under the Property Law Act 2007 demanding the principal sum and interest. The notice expired unremedied. The plaintiff is taking steps in relation to the realisation of its security.

[6] Copies of the Property Law Act Notices and Demands were served on the third and fourth defendants on 9 March and on the second defendant on 6 March.

[7] No payments have been received. The documentation is in order. The application for summary judgment has been served on the defendants. The defendants have taken no steps either in response to the Property Law Act Notice or to the service of these proceedings on them.

[8] There is no reasonably arguable defence on the face of the material before the Court. The plaintiff is entitled to summary judgment.

[9] There are two aspects to the summary judgment I note. First, as noted, the penalty interest rate is a compounding interest rate, effectively 35 per cent per annum

penalty rate. The documents executed by the defendants were commercial documents. The defendants took no issue with those rates at the time.

[10] The second issue is that the agreement provides for solicitor costs on a solicitor/client basis on the following terms at cls 15.1 and 15.2:

- 15.1 The Lender's legal costs in preparation and negotiation of this Agreement shall be paid by the Borrower.
- 15.2 The Borrower shall pay to the Lender Upon Demand all costs and expenses (including but not limited to legal costs and disbursements on a full indemnity basis) incurred by the Lender in connection with discharge of security and with enforcement or preservation of, or the attempted enforcement or preservation of any rights under this Agreement or any security, or suing for or recovering any sum due from the Borrower under this Agreement.

[11] There is an additional complication for the plaintiff which increased the costs in this particular case. The plaintiff had to seek a decision from the Overseas Investment Office as to whether as a company registered in the Seychelles, it was able to conduct the mortgagee sale. Again in reliance on the material before the Court I accept that the costs sought were properly incurred.

[12] For those reasons there will be judgment for the plaintiff against all defendants jointly and severally in the sum of USD 1,445,919.62, which includes interest to 18 November 2020. Interest is to continue to accrue at the rate of 35 per cent per annum, compounded monthly until payment.

[13] In addition the plaintiff is to have costs and expenses against the defendants' jointly and severally in the sum of NZD 60,201.70.

Venning J