

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

[2005] QSC 345

No 4983 of 2005

POINCIANA CO-OPERATIVE HOUSING
SOCIETY LIMITED

Plaintiff

and

ROBYN ANNE BLACK

Defendant

BRISBANE

..DATE 14/11/2005

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: The applicant is, essentially, seeking to restrain the plaintiff from recovering possession of land which contains the house on which she lives.

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The plaintiff is the mortgagee of the land. The loan agreement and mortgage was entered into on 26 October, 2004.

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The land is registered in the name of the first defendant who is the applicant before me.

Unfortunately, it appears from the affidavit material that the defendant, Ms Black, struggled to repay the loan from quite an early time. The loan was first in arrears on 31 December, 2004. The next payment was not made until 30 June, 2005 from which time the loan has remained in arrears.

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It does appear that the defendant, Ms Black, has suffered from ill health and some financial misfortune but, nevertheless, the plaintiff, as it was entitled to, commenced proceedings having served a default notice under the Property Law Act and the Consumer Credit Code which were not complied with.

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A default Judgment was obtained on 1 September, 2005 and an enforcement warrant has been issued to enforce that Judgment.

The parties entered into an agreement to endeavour to resolve the differences between them and the difficulties that the defendant had in paying the repayments required under the mortgage loan.

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The first clause required repayment of \$7,500 on the 13th of October, 2005 being divided up into an amount of \$7,126.66 and a further amount of \$373.34. Those payments were made.

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Clause 2 dealt with the adjournment of the defendant's application to today's date. Clause 3 provided that if the defendant made payment of her October 2005 mortgage payment by 31st October, 2005, the plaintiff would withdraw its enforcement warrant and the plaintiff would withdraw her application.

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Unfortunately, the defendant was unable to and did not comply with that clause in the compromise agreement. She did not make payment of the October 2005 mortgage payment by 31st October, 2005 and, indeed, has not, to this date, made payment. She remains, therefore, some \$5,608.56 in arrears in mortgage repayments.

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Tomorrow, another mortgage repayment is due and the defendant, unfortunately, has no ready cash which will enable her to make the October or the November payments.

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She has made suggestions to the Court as to ways in which she might be able to make those payments some time in the future but the fact is that this mortgage has been in arrears for all of this year, 2005 and it was only taken out towards the end of last year.

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