



HIGH COURT OF AUSTRALIA

29 February 2012

ROSLYN EDWINA WALLER v HARGRAVES SECURED INVESTMENTS LIMITED

[2012] HCA 4

Today the High Court allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales, which had upheld an enforcement action under a farm mortgage by Hargraves Secured Investments Limited ("HSI") against Roslyn Edwina Waller. The High Court held that the *Farm Debt Mediation Act 1994* (NSW) ("the Act") barred HSI from obtaining a money judgment against Ms Waller or possession of Ms Waller's farm.

Section 8(1) of the Act conditions a creditor's ability to take "enforcement action" in respect of a "farm mortgage" upon 21 days' prior written notice to the debtor farmer, in response to which the farmer may request mediation under s 9 of the Act. Enforcement action taken by a creditor to whom the Act applies, otherwise than in accordance with the Act, is void. Section 11 provides for the issue by the New South Wales Rural Assistance Authority ("the Authority") of a certificate that the Act does not apply to a farm mortgage if the farmer is in default and, relevantly, the Authority is satisfied that satisfactory mediation has taken place "in respect of the farm debt involved".

Ms Waller borrowed \$450,000 from HSI under a loan agreement ("the First Loan Agreement") secured by an "all monies" registered first mortgage over her farm ("the Registered Mortgage"). The Registered Mortgage, read with the First Loan Agreement, created a "farm mortgage" within the meaning of the Act. In October 2004 HSI gave Ms Waller a notice under the Act that she was in default and that HSI intended to take enforcement action. The parties took part in a mediation, as a result of which they entered into a further loan agreement ("the Second Loan Agreement"). In August 2006, after further default, the parties entered into another loan agreement ("the Third Loan Agreement"). In October 2006 the Authority issued HSI a s 11 certificate. It was common ground that the certificate was issued on the basis that a satisfactory mediation had taken place.

Following Ms Waller's default under the Third Loan Agreement, HSI brought a successful claim in the Common Law Division of the Supreme Court of New South Wales for possession of Ms Waller's farm and judgment for the outstanding borrowings. By majority the Court of Appeal of the Supreme Court of New South Wales dismissed Ms Waller's appeal. Ms Waller appealed by special leave to the High Court.

The primary issue on appeal to the High Court was whether the proceedings instituted by HSI concerned the same "farm mortgage" as that in respect of which the s 11 certificate had been issued. The Court held unanimously that they did not. The Court of Appeal had held that each of the Second and Third Loan Agreements discharged the preceding Loan Agreement. This meant that at the date of the proceedings the only obligations secured by the Registered Mortgage were under the Third Loan Agreement. The High Court held that the Third Loan Agreement, read with

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the Registered Mortgage, had created a new "farm mortgage". The subject of the mediation, and the certificate, was the debt owed under the First rather than the Third Loan Agreement. At the time of the proceedings there was therefore no certificate in force in respect of the farm mortgage. HSI was barred from taking any enforcement action against Ms Waller except in accordance with the Act. The definition of "enforcement action" in the Act included both the claim for possession and the claim for a money judgment.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*