IN THE SUPREME COURT OF NEW ZEALAND

SC 52/2010
[2010] NZSC 96

BETWEEN	GE CUSTODIANS Appellant
AND	BRUCE LEONARD BARTLE AND DOROTHY JUDITH BARTLE First Respondents
AND	BARTLE PROPERTIES LIMITED Second Respondent
AND	JONATHAN MATHIAS Third Respondent

Court: Elias CJ, Tipping and McGrath JJ

Counsel: J A Farmer QC, B J Upton and M V Robinson for Appellant
J G Miles QC, P J Dale and D W Grove for Respondents

Judgment: 5 August 2010

JUDGMENT OF THE COURT

A Leave to appeal is granted.

B The approved ground of appeal is whether the credit contracts were oppressive in terms of the Credit Contracts and Consumer Finance Act 2003.

REASONS

[1] The approved ground is stated in terms that will enable counsel for the appellant and the first and second respondents to address the issues respectively raised in their written submissions on the leave application. The ground does not, however, extend to permit argument on the question of relief if the appeal is

dismissed. The Court of Appeal[1] has referred relief back to the High Court for decision. Randerson J decided on 4 June 2010 that the High Court's consideration of it should await the outcome of the appeal process in this Court. No appeal has been brought against that decision. We are satisfied that we should not permit it to be addressed in this appeal.

[2] The first and second respondents have also applied for an order for payment of their reasonable costs by the appellant on an indemnity basis whatever the outcome of the appeal. They submit that their case is clearly arguable (as to which there is no issue), that there is a substantial public interest in obtaining a decision of this Court on the issues raised by the appeal, and that it would be onerous to expect them to fund the appeal.

[3] The first and second respondents did not make such an application at an earlier stage of the proceedings. They have filed an affidavit which makes clear that, although the first respondents are part of a large group, the litigation is being funded largely by the forbearance of their solicitors and counsel. The general rule is that decisions on costs follow the outcome of the litigation when the ultimate merits are apparent and account can be taken of the way in which litigation is conducted.[2] This Court does not presently have before it either factual findings or a record of evidence that enables it to deal with costs on the merits. On what has been provided to us, however, we are satisfied that this is not a case for any pre-emptive costs order as a condition of granting leave. Accordingly we dismiss the application, without prejudice to any submissions for costs that the parties wish to make at the hearing.

[4] We accept the respondent's submissions that the appeal should be given an early fixture. Neither party has given an indication of counsel's preferred dates for the hearing of the appeal in the event that leave is given as required by r 20(4) of the

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1 *Bartle v GE Custodians* [2010] NZCA 174.
2 *Berkett v Cave* [2001] 1 NZLR 667 (CA) at [12].

Supreme Court Rules 2004. Following consideration of any submissions made in accordance with r 32 the appeal should, however, be given a two day fixture as soon as possible after 1 October 2010.

Solicitors:
Simpson Grierson, Auckland for Appellant
Ellis Law, Auckland for First and Second Respondents