

**IN THE DISTRICT COURT
AT TAURANGA**

**I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA**

**CIV-2021-070-000218
[2021] NZDC 8364**

BETWEEN	HEARTLAND BANK LIMITED Plaintiff
AND	ATTRI AND SONS LIMITED First Defendant
AND	DEVENDER KUMAR Second Defendant

Hearing: 6 May 2021

Appearances: A Johnson for the Plaintiff (by telephone)
First and Second Defendants self-represented

Decision: 10 May 2021

**RESERVED DECISION OF JUDGE I D R CAMERON
[ON REASONS FOR ENTERING SUMMARY JUDGMENT ORDERS]**

[1] On 6 May 2021 I entered summary judgment for the plaintiff against the first and second defendants. This related to a loan made by the plaintiff bank to the first defendant company, guaranteed by its owner and director Devender Kumar. The principal sum for which summary judgment was entered was \$66,723.85. Interest was also ordered. Ongoing interest was ordered, as well as solicitor and client costs totalling \$5,423.55.

[2] I indicated at the time that I would give reasons for making the orders, despite opposition from the first and second defendants. The application for summary judgment and accompanying documents were filed and served on 30 and 31 March 2021 respectively. The notice of proceeding required the defendants to file a notice of opposition and affidavits setting out any defence not less than three working days before the date of the hearing.

[3] On 3 May 2021, three days before the hearing on 6 May 2021, the defendants filed a notice of opposition claiming they had an arguable defence to the claim. Accompanying that notice of opposition was a memorandum by the second defendant. This was to the effect that he understood that he qualified for legal aid and had found suitable lawyers in Auckland and met with them on 6 April 2021. The memorandum stated that the lawyer filed a legal aid application on his behalf on 9 April 2021. Legal Services sought further information on 15 April 2021, and the lawyer replied to the letter on the same day. Then on 23 April 2021 the second defendant states that he received a letter from Legal Services confirming the application was being considered and still processed.

[4] The second defendant Devender Kumar appeared in Court on 6 May 2021, seeking an adjournment so that legal aid could be granted and affidavits in opposition filed. Mr Kumar also handed the Court a letter from Denham Bramwell, solicitors of Auckland dated 5 May 2021. This letter confirms that legal aid was still being processed and contains the statement:

In our view, there was an arguable defence to the claim and also the possibility of adding a counterclaim defendant in the proceedings.

[5] No further details were provided.

[6] I enquired of Mr Kumar what the nature of the defence was. He advised the Court that his company, the first defendant, had been placed into receivership by Paper Plus on 23 January 2020. The chartered accountant's BDO were appointed. The Court was advised that the receivership terminated on 30 March 2021. It became apparent from what Mr Kumar told the Court that he considered that the receivers had sold the company assets for a gross undervalue. I advised him that this would not affect the validity of the loan from the plaintiff bank, and at best would be a separate claim against the receivers. Mr Kumar also advised that the creditor Paper Plus had wrongly sought the appointment of receivers. Again, Mr Kumar was advised that this would have no effect on the validity of the loan from the plaintiff.

[7] Mr Kumar was unable to identify any defence to the claim by the plaintiff for repayment of the money lent. Nor was there anything in the letter from Denham Bramwell dated 5 May 2021 that identified any defence to the plaintiff's claim.

[8] I was satisfied that there was no arguable defence to the plaintiff's claim, and for this reason entered summary judgment against both defendants.

I D R Cameron
District Court Judge