IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

CIV-2012-419-000563
[2015] NZHC 98

BETWEEN	CROWN ASSET MANAGEMENT LIMITED Plaintiff
AND	PETER JOHN CAMERON First Defendant
	MARGARET JOYCE CAMERON Second Defendant

Hearing: 7-9 July 2014

Counsel: S D Munro and E E Thiele for the Plaintiff
P V Cornege and O J Morgan for the Defendants

Judgment: 9 February 2015

JUDGMENT OF DUFFY J

This judgment was delivered by Justice Duffy
on 9 February 2015 at 12.00 pm, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Counsel: P V Cornege, Hamilton
O J Morgan, Hamilton

Solicitors: Anthony Harper, Christchurch

[1] This proceeding involves the plaintiff, (Crown Asset Management Ltd), seeking repayment under a guarantee from the defendants of a loan secured under a mortgage ("the secured lending"). In the alternative, the plaintiff seeks recovery of moneys it alleges are due to it by the defendants, (Mr and Mrs Cameron), as principal debtors, or in their capacity as trustees of the Cameron Family Trust.

[2] Upon reading the guarantee, there is nothing to suggest that the defendants are not obliged to repay the secured lending. However, the facts reveal that over the years there were a number of advances made to companies with which the defendants were associated. Advances were also made to Mr Cameron personally and to the Cameron Family Trust of which he and Mrs Cameron were trustees. The advances were either made by South Canterbury Finance Ltd ("SCF") or by other parties who later assigned their interest in the advance to SCF. It is by no means clear whether all of those advances come within the secured lending. There were also a number of payments made by the debtor companies, or the defendants to reduce or extinguish the various advances from the plaintiff. The key questions are:

(a) Whether the outstanding debt is for money advanced under the secured lending, and if it was, whether the payments made by the debtor companies and/or the defendants have served to extinguish that debt or a part thereof; or

(b) Whether the outstanding debt is debt for which the Camerons are either personally liable or liable as trustees for the Cameron Family Trust.

Background

[3] Mr Cameron is a retired farmer. Mrs Cameron is his wife. During his working life, Mr Cameron became involved in the development and subdivision of land. He and his wife were directors of registered companies through which they carried out those projects. Mr Cameron relied on SCF to provide funding for the projects. He established a close working and personal relationship with the late

Allan Hubbard, who was the managing director of SCF. On occasion, Mr Hubbard personally invested in the Camerons' development projects.

[4] Over the years, funds were advanced from SCF or companies associated with SCF for the various projects with which the Camerons were involved. There was a vast array of financing arrangements that the defendants, the Cameron Family Trust and companies associated with the Camerons utilised over the years to help them fund those projects. The arrangements under which the advances were made were loose and often lacking formal documentation. SCF appears to have paid little regard to the separate legal personalities of the recipients of the advances. What actually occurred and how that marries with the legal form of the securities now relied upon by the plaintiff will require careful examination and determination as to what exactly were the terms of the securities, and what transpired as regards payment and discharge, if in fact those occurred.

[5] Following the global financial crisis in 2008, SCF found itself in financial difficulty. SCF was placed in receivership. Mr Hubbard, along with other SCF directors, was charged with various regulatory offences. In 2012, this proceeding was commenced. By 2012, the plaintiff had acquired SCF's interest in the loans and securities now in issue.

SCF record-keeping

[6] The plaintiff attempted to make sense of the financial dealings between the Camerons and their companies on the one hand, and SCF and its associated companies on the other. However, its officers have no direct personal knowledge of the relevant transactions. The records of the advances kept by SCF and its associated companies were not good. Mr Hubbard was known for personally handling the bookkeeping and recording it on old-fashioned ledger cards in accordance with an idiosyncratic system that was probably best known to Mr Hubbard. Further, the long working and personal relationship that arose between Mr Hubbard and the Camerons may have led to neither party paying close attention to the character of the advances that were made, or to how payments were characterised. The purpose for which some of the advances were made is not clear

and some advances appear to have been undocumented. Moreover, the mortgage securities that were in evidence do not readily tally with other SCF records of advances that were made to the Camerons or companies associated with them. For example, the sums recorded on the mortgages as loans were not actually advanced at the time the mortgages were executed. Consequently, it is difficult to marry the mortgages with other SCF records of advances to either the Camerons or related entities. On one occasion, Mr Hubbard recorded a large debt, which he had recorded as owing by the Camerons personally to SCF, another SCF related company, without informing the Camerons of what had occurred. Later, Mr Hubbard altered the records to show the debt back with SCF. Why Mr Hubbard chose to arrange his records in that way is anyone's guess. Sorting all this out is not helped by the fact that some of the files of SCF were lost in the Canterbury earthquakes (September 2010 and February 2011). Whether this might be an explanation for the apparent poor record-keeping of SCF and, therefore, the lack of documentation for some advances from SCF to the Camerons or associated entities is a matter of speculation. Making sense of the financial arrangements that existed between the parties at any one time has been further hindered by Mr Hubbard's death in a motor vehicle accident in September 2011. Thus, there was no one with any personal knowledge of the arrangements from the SCF end to explain them to the Court. This has meant that the parties and the Court have had to struggle with trying to make sense of the information that is available.

The security/guarantee

[7] The secured lending on which the plaintiff relies for recovery of its money from the defendants is registered mortgage 8144791.1, dated 1 March 2009. It is registered against certificate of title SA68/417, South Auckland Registry. The postal address for this land is 36 Roto-o-Rangi Road, Cambridge. I shall refer to this security as the 2009 mortgage.

[8] The principal sum under the 2009 mortgage was for a fixed sum of $550,000 that was to be repaid by 31 December 2009. The mortgagor was Twin Oaks Enterprises Ltd ("Twin Oaks"). The 2009 mortgage was registered initially as a first mortgage and then, after a change in priority was effected, as a second mortgage.

The Camerons, who were the two directors of Twin Oaks, personally guaranteed Twin Oaks' performance of the secured lending.

[9] The 2009 mortgage incorporated the provisions of Memorandum of General Terms and Conditions 2007/4237 and the terms in the Annexure Schedules. The Annexure Schedule contained two terms, one of which made the 2009 mortgage collateral to an earlier security, and the other made the 2009 mortgage a substitute security for an earlier mortgage:

(a) "This mortgage is collateral to and secures the same monies as were secured under a Deed of Assignment of the benefit of an Agreement dated 29th November 1999 between Cameron International (NZ) Limited as Assignor and the mortgagee herein as Assignee to the end and intent that a default under either the said Deed of Assignment of the benefit of an Agreement or the herein Mortgage shall be deemed to be a default under the other"; and

(b) "This mortgage is in substitution for and secures the same monies as were secured under Mortgage No. B501871.2 and B668717.2".

[10] The parties appear to have been unable to refer the Court to a copy of the terms and conditions in the actual Memorandum No 2007/4237 that was attached to the 2009 mortgage, but they did provide in the common bundle a general copy of that instrument.

[11] Clause 4(a) of this document defined "secured moneys" to mean:

(i) The principal sum;

(ii) Any *further* advances that the mortgagee agrees to make to any party giving this mortgage under a secured agreement; and

(iii) All advances, reasonable costs incurred and expenditure made for the protection, maintenance, preservation, or repair of any building or other improvement on the land, or for the

enforcement of any security, interest under this mortgage, and any other amounts contemplated by s 87 of the Property Law Act 2007.

[12] Clause 4(b) provided that moneys are to be regarded as included in "the secured moneys":

(i) Whether or not such moneys are also secured by any other security; and

(ii) Whether or not such moneys are owing by any party giving this mortgage jointly with or otherwise in combination with any person who is not a party giving the mortgage.

[13] Clause 5 set out the terms of the covenant to pay, and to comply with obligations. The covenant to pay was confined to payment of the "secured moneys". There was no provision for the mortgagee to recover from either the mortgagor or the guarantor any money that was outside the definition of "secured money".

[14] On 13 August 2010, SCF made demand for payment of advances that remained outstanding. Some repayments were made in late 2010 and early 2011. Subsequently, the first mortgagee, Glaister Ennor Solicitors Nominee Company Ltd, exercised its right of power of sale over SA68A/417. Glaister Ennor wrote to SCF and confirmed that there were no surplus funds available to it as second mortgagee. The plaintiff claims that as at 20 September 2011, the debt owing under the 2009 loan/mortgage was $549,695.65. The plaintiff also seeks contractual rate interest on that amount (15 per cent) from 21 September 2011 to the date of judgment, and costs on a solicitor-client basis. As at 30 April 2014, the debt had increased to $638,428.19.

[15] There is nothing to show that any money was advanced to Twin Oaks after the 2009 mortgage was executed. The only SCF record of advances identified as made to Twin Oaks is ledger card 6161, which shows that those advances ceased on 31 May 2005. So they cannot have been made under the 2009 mortgage. There are

ledger card records (5842, 5842B and 7004B) of advances identified as made to P J and M J Cameron (the defendants). But they are legally separate from Twin Oaks.

[16] Ledger card 5842B, which is in the name of P J and M J Cameron, records indebtedness owed by them to SCF up to 23 June 2008. By 30 June 2008, ledger card 5842B records the Camerons as having a nil balance. However, this is because on 23 June 2008, SCF credited ledger card 5842B with the sum of $436,805, which came from Aorangi Securities Ltd ("ASL"), an associated company of SCF. From then until 27 February 2009, the Camerons were recorded as indebted to ASL for the sum of $436,805, plus interest. By 27 February 2009, the debt had increased, with interest, to the sum of $482,167.24. Then, on 2 March 2009, an apparently new ledger card was opened for P J and M J Cameron (being 7004B), which recorded them as owing $482,167.24 to SCF, with a nil balance recorded on their ASL ledger card. Ledger cards 5442, 5842B and 7000B each refer to a mortgage security but this security is not identified in any way. The Camerons had no knowledge of the debt swapping that is recorded as having occurred between SCF and ASL. These circumstances are illustrative of how messy the SCF records are. Further, in such circumstances, I am not prepared to treat advances recorded on ledger card 7004B as made to the Camerons personally as advances that meet the clause 4(a) definition of "secured money" in the 2009 mortgage.

[17] The plaintiff argues that there were earlier advances to the Camerons that were secured by the earlier mortgages that are referred to in the Annexure Schedule of the 2009 mortgage, which is enough to bring those earlier advances within the scope of the 2009 mortgage document and the guarantee contained therein.

[18] The complexity of the earlier lending makes it hard to follow. It is important to recognise from the outset that one of the securities referred to in the Annexure Schedule did not exist at the time the 2009 mortgage was executed. No one at the time appears to have realised that, which is a warning when it comes to reliance on contemporary exchanges between the Camerons and SCF to determine: (a) who owed what to SCF at any one time; and (b) how much was known in this regard by those involved.

[19] Mortgage no B501871.2 is what the parties commonly referred to as the Edgewater mortgage. The interests of the mortgagee and ownership of the relevant land had passed between so many related parties that on 22 November 1999, it so happened that the mortgagee's interest in this mortgage passed to the mortgagor. No one at the time appears to have recognised the consequence of this event. At the hearing, the plaintiff accepted the Camerons' argument that once the interests of the mortgagor and the mortgagee were held by the same person, any security and loan indebtedness under this mortgage were extinguished by operation of merger. This was also unknown to Mr Cameron until the proceeding was commenced. Although the Edgewater mortgage continued to be registered on various certificates of title after 22 November 1999, the parties accept that those registrations must be disregarded.

[20] A deed of assignment of the benefit of an agreement between Cameron International Ltd and SCF, dated 29 November 1999, is in evidence, but the agreement dated 29 November 1999 between Cameron International (NZ) Ltd and SCF is not in evidence. Insofar as any indebtedness under those instruments might now fall under the 2009 mortgage and be recoverable from the Camerons as guarantors of that mortgage, I am in no position to identify what that might come to, if anything. I have seen no records from SCF of outstanding advances that were made to a party by the name of Cameron International (NZ) Ltd, let alone for advances purportedly made under the deed of assignment, or the agreement dated 29 November 1999.

[21] There remains mortgage no B668717.2. CT 68A/417 records that this mortgage was registered against this title on 19 July 2001. The registered proprietor of CT 68A/417 at the time was Twin Oaks.

[22] I am not sure that a proper copy of mortgage no B668717.2 is in evidence. Pages 375 to 377 of the common bundle purport to be a copy of this mortgage. However, at page 375, the front page of that document records a mortgage registered against CT 64B/979 and not against CT 68A/417; this page bears a discovery stamp number that emanates from the Camerons. Page 376 reveals a middle page of a mortgage document that was faxed from LINZ Hamilton on 23 January 2007. The

fax header on page 376 of the common bundle records that this page was the thirteenth page of a 14 page fax transmission. The same fax header does not appear on the other pages of what purports to be a single mortgage document. Page 377 is a further page of a mortgage document that contains a registration number from LINZ, being B 668717.2. The document that purports to be contained between pages 375 and 377 of the common bundle looks to me like someone's attempt to reconstruct mortgage no B 668717.2. The content of the pages appears to run on from one page to the other, but other aspects of those pages are more consistent with pages 375 to 377 of the common bundle being a compilation, rather than a single document. As the parties appear to be content to treat this compilation as a reconstruction of this mortgage document, I will do so as well, but only for this reason.

[23] Mortgage no B 668717.2 reveals Twin Oaks to be the principal debtor. There is no evidence that directly proves that Twin Oaks continues to owe moneys that were advanced under this mortgage. Nor is there evidence that inferentially proves that Twin Oaks continues to owe money to SCF under this mortgage. The only SCF record showing Twin Oaks indebtedness to SCF is ledger card 6161, and this shows all indebtedness cleared as at 2005. For this reason alone, the 2009 mortgage and the guarantee given by the Camerons cannot extend to cover indebtedness for advances made under mortgage no B 668712.2.

[24] However, mortgage no B668717.2 extends the security of this instrument to cover moneys advanced under an earlier mortgage: being, "No 638239.5 (in Memorandum of Variation 652586.1)"; and to the deed of assignment of the agreement of 29 November 1999 between Cameron International (NZ) Ltd and SCF. I have already dealt with the latter. A copy of the memorandum of variation 652586.1 is in evidence. This records the variation of a mortgage between the trustees of the Cameron Family Trust (the Camerons and Anchor Trustees Ltd) as mortgagors, and SCF as mortgagee. The variation of mortgage is dated 29 November 1999. The variation increased the principal sum to be lent to the mortgagors to the sum of $355,000. Mortgage no 638239.5 is also in evidence; this also records a mortgage between SCF as mortgagee, and the trustees of the Cameron Family Trust as mortgagors. Working backwards chronologically, this is

the first time that the Camerons, in their role as trustees, are actually named as principal debtors and mortgagors.

[25] For the extended security term in the Annexure Schedule of the 2009 mortgage to extend that security, and therefore the guarantee by the Camerons, to cover indebtedness of the trustees of the Cameron Family Trust under mortgage no "638239.5 in Memorandum of variation 652586.1", the Court would need to be satisfied that: (a) the term in the Annexure Schedule of the 2009 mortgage had the effect of extending the benefit of the guarantee to cover the earlier indebtedness owed by the trustees of the Cameron Family Trust; and (b) that, as at the present time, payment of those moneys was still outstanding.

Does the 2009 mortgage extend the Camerons' guarantee to the earlier loan to the trustees of the Cameron Family Trust?

[26] In essence, a registered memorandum of mortgage under the Torrens system involves two things: (a) a personal loan obligation owed by party A as borrower to party B as lender; (b) collaterally, a security that A gives to B over A's land, subject to a right of redemption.[1] In *Duncan v McDonald*, the Court of Appeal stated:[2]

> A registered mortgage consists of a covenant to pay and other supporting covenants by the mortgagor and a charge to secure their performance.

[27] So, when the trustees of the Cameron Family Trust entered into mortgage no 638239.5 with SCF, they gave a personal covenant to SCF to pay the loan secured by this mortgage, as well as a charge over the subject land. The question, therefore, is whether the reference in the Annexure Schedule of the 2009 mortgage to mortgage no B668717.2, which in turn referred to mortgage no 638239.5, is enough to draw the personal covenant given by the trustees of the Cameron Family Trust as part of mortgage no 638239.5 within the scope of the guarantee that was included in the 2009 mortgage.

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1 Peter Blanchard "Indefeasibility under the Torrens System in New Zealand. In David Grinlinton (ed) *Torrens in the twenty-first century* (LesixNexis, Wellington, 2003) 29 at 40.

2 *Duncan v McDonald* [1997] 3 NZLR 669 (CA) at 682.

[28] The plaintiff's argument proceeded on the assumption that the personal covenant to pay the loan automatically ran with the charge that was contained in each mortgage. However, I do not consider that this can be assumed. Whether a personal covenant to pay runs with a charge that is brought into a subsequent mortgage seems to me to turn on the language that is used in the mortgage document.

[29] The language in the annexure to the 2009 mortgage and its forerunner, mortgage no B 668717.2, is very precise. The words that were used state that the mortgage is in "substitution for and secures the same monies as were previously secured under" the earlier mortgage. Insofar as the later mortgages are substitute mortgages, they make no express reference to having substituted the personal covenants to pay moneys lent under the earlier mortgages. The 2009 mortgage does not state that it covers past lending as it could have done by including a specific reference to past debts owed by the mortgagors to the mortgagee in the definition of "secured moneys". Nor does the 2009 mortgage operate in a way that allows for the earlier indebtedness to be repaid by funds advanced under it. Instead, the personal covenants to pay that arose from the earlier mortgages appear to have continued to remain live in those mortgages following the execution of the later mortgages.

[30] The references in the Annexure Schedules of each mortgage are limited to references regarding what is to be *secured* by the mortgage. In principle, the personal covenants to pay that were given under earlier mortgages would continue until payment of those debts, or until such debts were extinguished in some other way such as, for example by being rolled into, or replaced by a later loan from the same mortgagee. It is legally possible for the parties to a registered mortgage to agree that the charge that is given on the land will be replaced by a new such charge without there being any alteration to the original covenant to pay the loan. In the present case, it is clear that at the time mortgage no 638239.5 was executed, the trustees of the Cameron Family Trust were the registered proprietors of the subject land. Later, by the time mortgage no B 669717.2 was executed, the registered proprietorship of this land had passed to Twin Oaks. So, substituting the new charge for the previous charge was one way of permitting the loan to the trustees of the

Cameron Family Trust to run on, whilst at the same time ensuring that this loan retained the same level of security.

[31] In view of the above, I am not prepared to adopt the plaintiff's approach of simply assuming that the personal covenants to pay that were contained in the earlier mortgages ran with the charges that were brought into the later mortgages to the extent that those earlier covenants now fall within the guarantee given by the Camerons. This is particularly so in the case of mortgage no 638239.5 for the additional reason that this mortgage is not expressly referred to at all in the 2009 mortgage. If the parties to the 2009 mortgage had intended that it also cover mortgage no 638239.5, they could have achieved that result by expressly providing for this event in the Annexure Schedule of the 2009 mortgage. The omission to refer to it at all in the 2009 mortgage leads me to conclude that nothing of that mortgage was intended to be included in the 2009 mortgage.

[32] If I am wrong in concluding that the personal covenants to pay in the earlier mortgages did not run with the securities, nonetheless, there is a further obstacle to the personal covenant in mortgage no 638239.5 being covered by the Camerons' guarantee as given in the 2009 mortgage. Mortgage no 638239.5 is two steps removed from the 2009 mortgage. The law of guarantees requires that the document creating the guarantee "evidences with sufficient clarity an intention" on the part of the guarantors to guarantee the debt in issue.[3] In *Bradley West Solicitors Nominee Co Ltd v Keeman*, Tipping J posed the question:[4]

> … whether it is sufficiently clear from the document as a whole what they [the defendants] have agreed to guarantee?

[33] Later, Tipping J stated that it was "sufficiently plain" from the document that the defendants intended to guarantee the obligations of the mortgagor to the mortgagee. In this regard, Tipping J noted that the relevant parties were named in the document and the "mortgage debt which [was] being guaranteed [was] identified as being that comprised and described in mortgage no 394022/1 in the Canterbury Land Registry." This was enough for Tipping J to conclude that there "is a sufficient

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3 See *Bradley West Solicitors Nominee Co Ltd v Keeman* [1994] 2 NZLR 111 at 116.
4 At 116.

incorporation by reference of the instrument creating the obligation between the creditor and the debtor in respect of which the guarantee is to operate."[5]

[34] In the present case, I do not consider that there is a sufficient incorporation by reference of mortgage no 638239.5 (which created the debt between the Camerons and SCF) in respect of the guarantee given in the 2009 mortgage. The only way that the persons executing the 2009 mortgage would have known of mortgage no 638239.5 is if they had read the reference in the Annexure Schedule of the 2009 mortgage to mortgage no B 668717.2 and then went to that mortgage. The reference in the 2009 mortgage to mortgage no B 668717.2 may have been a sufficient reference to identify that this mortgage was to some extent to be incorporated into the scope of the 2009 mortgage, but it was not sufficient in and of itself to incorporate mortgage no 638239.5 as well.

[35] The findings that I have reached regarding the absence of proof of any debt owed by Twin Oaks after 2005 and the exclusion of mortgage no 638239.5 from the scope of the 2009 mortgage mean that there is nothing that the plaintiff can point to that comes within the scope of the guarantee that it now sues upon. It follows, therefore, that the claim based upon the guarantee must fail for want of proof, and/or for want to certainty as to the scope of the guarantee.

Do the Camerons owe money to SCF in their personal capacity or as trustees for the Cameron Family Trust?

[36] The SCF ledger cards 5842, 5842B and 7004B are in the name of P J and M J Cameron. Apart from the documentation recording the loan to the trustees of the Cameron Family Trust that formed part of mortgage no 638239.5 (as varied), there is no loan documentation.

[37] The plaintiff has attempted to reconstruct a loan history from the ledger cards and copies of correspondence and other documents that remain on the SCF files. However, it is not clear from the available material whether the total indebtedness that the plaintiff now seeks to recover was ever owed by the Camerons, either in

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5 At 117.

their personal capacity, or as trustees of the Cameron Family Trust. Whilst the plaintiff may consider that, in substance, SCF has provided funds to the Camerons and entities associated with them, before the Court can allow recovery of moneys owed, it needs to be satisfied that the debtor against whom judgment is given corresponds with the legal form of the loan being sued upon. The Court is obliged to respect the legal form of the loan transactions.[6] It cannot order the Camerons to repay loans that they may have benefited from in substance, but not as to form. The evidence shows bank accounts in the name of the Camerons and entities with which they are associated receiving funds from SCF. The evidence shows letters written by Mr Cameron in which he seeks funds from SCF either for himself or the entities associated with him. The evidence also shows that the Camerons have made payments to SCF, which is proof that they recognise moneys are owed to SCF. However, the exchanges between SCF and Mr Cameron reveal that neither SCF nor Mr Cameron respected the legal distinctions between the Camerons personally and the other entities with which they were associated. Put simply, the available records from SCF are a mess.

[38] Further, as I have already stated, while Mr Hubbard was dealing with the loans from SCF and ASL to either the Camerons or associated entities, the management of the lending from the SCF end was messy. There is no explanation in the records of SCF contemporary to Mr Hubbard's stewardship of SCF that allow advances in financial statements to be tied to particular legal records of loan transactions. The evidence the plaintiff presented in this regard was from its officer, Richard Jarman. He attempted to explain what might have occurred. However, his explanations are no more than inferences and opinions that he has formed from what little material is available. As might be expected, Mr Jarman has drawn inferences and voiced opinions that are favourable to SCF's case. However, Mr Jarman did not give evidence as an expert witness. The inferences that he drew and the opinions that he gave as to what had occurred are technically not admissible as evidence. The Camerons only made limited objection to his evidence, but nonetheless I do not consider that I can place any weight on this evidence insofar as it amounts to no more than his inferential reasoning and opinion.

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6 *Mills v Dowdall* [1983] NZLR 154 (CA) at 156, and *NZI Bank Ltd v Euro-National Corporation Ltd* [1992] 3 NZLR 528 and 529.

[39] Another problem that the plaintiff faces is that many of the advances recorded on the relevant ledger cards appear to be for the recovery of interest payments on the moneys shown as owing. However, without details of the terms of the alleged loans, it is impossible to know if the draw-down of those interest payments was in accordance with the terms of the loans. Thus, it is impossible to say if SCF was entitled to claim payment of such interest.

[40] Without loan documentation to support the existence of loans, identification of the legal identity of the borrower and the terms of the loan, I cannot see how the plaintiff can prove it is entitled to recovery from the Camerons. It follows, therefore, that the plaintiff's second cause of action against the Camerons must also fail.

[41] There is a further reason why I consider that the plaintiff's case must fail; this relates to the evidence given by Mr Cameron. Mr Cameron says he was involved in two joint venture property developments with Mr Hubbard: Woodbury Rise in Tauranga; and Emerald Shores in Papamoa. In addition, Mr and Mrs Cameron commenced the development by Twin Oaks in Cambridge.

[42] Mr Cameron says that in 1997, the Cameron Family Trust trustees were Mr and Mrs Cameron and Anchor Trustee Ltd. In around April 2003, Anchor Trustee Ltd, as a trustee, was replaced by Raymond Sullivan Trust Ltd. Twin Oaks is 100 per cent owned by the Cameron Family Trust.

[43] Mr Cameron says that Cameron International (NZ) Ltd was set up to be a project manager for the three aforementioned property subdivision projects. It is owned 50/50 by Mr and Mrs Cameron.

[44] Mr Cameron refers to a first mortgage that was executed to support further advances to a company, Horne Pryde Ltd, for the Woodbury Rise project. Horne Pryde Ltd was later placed into liquidation, and the Woodbury Rise project assets were sold to Woodbury Rise Ltd.

[45] Regarding the Twin Oaks project, Mr Cameron says the Roto-o-Rangi Road property was first acquired in April 1997 by the Cameron Family Trust. This

property then consisted of 1.098 hectares. He says that at around 7 April 1998, another 1.0985 hectares was acquired. He says that in 1999, the Cameron Family Trust sought a loan facility from SCF to finance the development costs of the land at Roto-o-Rangi Road.

[46] Regarding the plaintiff's claim for recovery of the SCF advances from the Camerons, Mr Cameron says that SCF has made a number of bookkeeping errors. Some of the loan advances do not correctly identify the borrower. For example, ledger card 5842 incorrectly referred to the borrowers as Mr and Mrs Cameron, rather than to them as the trustees of the Cameron Family Trust. Mr Cameron says that a certain advance of $141,069 was incorrectly recorded as being owed by the Cameron Family Trust, Twin Oaks, or the Camerons personally. In addition, he alleges that certain payments from Mr Hubbard were supposed to be a reimbursement for development costs incurred as part of the development scheme involving Mr Hubbard, but were instead recorded as a loan owed to SCF.

[47] Regarding ledger card 6161, which purports to record a loan facility under the name of Twin Oaks, Mr Cameron agrees that Twin Oaks received $264,678.49 from SCF in total. However, he says that in relation to those moneys, no loan agreement was executed by the company, or was guaranteed by Mr or Mrs Cameron. He says that this debt must be an unsecured debt of the company.

[48] Regarding the 2009 mortgage, Mr Cameron does not dispute that Twin Oaks executed the mortgage agreement with Mr and Mrs Cameron as guarantors. Mr Cameron says that "no contract number records an advance of $550,000" to Twin Oaks and, therefore, no money was owed under that mortgage.

[49] Mr Cameron also refers to a SCF statement for the period 31 December 2009 to 30 April 2012, which records an advance to Twin Oaks of $480,000 on 31 December 2009. He says there is no record of this money being paid into the company's bank account.

[50] Regarding the loan to the Camerons from ASL, Mr Cameron confirms that they did not know of this transaction at the time it occurred.

[51] As defendants, the Camerons do not need to prove anything. In this case, I have been satisfied that the plaintiff's case must fail for want of proof. I have referred to Mr Cameron's evidence because there is nothing from the plaintiff by way of evidence to contradict what Mr Cameron has said. I can see no reason why, therefore, I should not accept Mr Cameron's evidence. In my view, his evidence goes to confirm the doubts that I have expressed regarding the plaintiff's case, and, therefore, my view that the plaintiff cannot establish to the civil standard of proof its case against the Camerons.

Result

[52] The plaintiff has failed to prove its claims against the defendants. Accordingly, the claims are dismissed and judgment is entered for the defendants.

[53] Leave is reserved to the parties to file memoranda as to costs.

Duffy J