IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2016-409-001128
[2016] NZHC 2827

BETWEEN	FTG SECURITIES LIMITED Plaintiff
AND	BANK OF NEW ZEALAND Defendant

Hearing: 22 November 2016

Appearances: D J Ballantyne for Plaintiff
K M Paterson and J D Silcock for Defendant

Judgment: 22 November 2016

Reasons: 25 November 2016

REASONS FOR JUDGMENT OF GENDALL J

NOTE: PARAGRAPH [17] OF THIS JUDGMENT HAS BEEN REDACTED

Introduction

[1] The plaintiff in this proceeding, FTG Securities Limited (FTG), applied for an interim injunction to restrain the defendant Bank of New Zealand (BNZ) from selling, disposing or otherwise dealing with a property at 179 Tuam Street, Christchurch (the property), over which BNZ holds the first mortgage, and from selling, transferring or otherwise disposing of the mortgages it holds from the owner of the property, Tuam Ventures Limited (In Liquidation and in Receivership) (TVL). BNZ, as I have noted, holds a first mortgage and FTG a second mortgage over the property.

[2] Under some urgency, the hearing of this application took place on 22 November 2016 at 3 p.m., given that a mortgagee sale auction of the property by BNZ was scheduled to take place the next day, 23 November 2016 at 10 a.m.

[3] As to these timing issues, it does seem that from around 20 October 2016 FTG had been on notice that the BNZ mortgagee sale process was commencing with the auction scheduled for 23 November 2016. Despite this, however, it appears that FTG delayed filing its present injunction proceeding until 17 November 2016 and it was not served on BNZ until 18 November 2016.

[4] At the hearing of this matter before me on 22 November 2016, I gave an oral judgment dismissing the application and confirming that the interim injunction sought by FTG to restrain the mortgagee sale was refused. In giving that judgment I indicated that my detailed reasons for the decision would follow. I now set out those reasons.

The background to the present application

[5] Both FTG and TVL, as I understand it, are or have been beneficially owned and controlled by Ms Kristina Buxton, her husband Mr David Henderson (who is an undischarged bankrupt) and their family interests.

[6] FTG raises a number of grounds in support of its present application. These essentially identify three aspects said to be serious issues to be tried. FTG's allegations related to these issues are:

(a) BNZ cannot exercise the power to sell the mortgaged property here because there is no longer in existence a valid notice given pursuant to ss 119 and 121 Property Law Act 2007 (PLA);

(b) BNZ is in breach of its duties as mortgagee in possession to take reasonable precautions to obtain a proper price for the property and in terms of s 176 of the PLA; and

(c) BNZ is in breach of its duties to use its powers as mortgagee for proper purposes and not to act in a manner which unfairly prejudices or wilfully and recklessly sacrifices the interest of FTG as second mortgagee of the property.

[7] FTG also suggests that damages are not an adequate remedy here, and as a consequence, if interim relief is refused here, it would suffer irreparable harm.

[8] Accordingly, it is FTG's overall position that the balance of convenience in this case lies in granting the injunction sought by it.

[9] A number of affidavits have been filed in some haste in this proceeding. Affidavits of Mr David Henderson (on behalf of the company, as the husband of its present director) and Mr Craig Thiele (a commercial property broker) were filed initially by FTG in support of the application. Then, on the morning of the hearing of this matter on 22 November 2016, FTG filed additional affidavits sworn that day again from Mr Henderson, and also from Mr Desmond John Knowles, and Mr Andrew John Thorn. Objection was properly taken by counsel for BNZ to the very late filing of these additional affidavits. Notwithstanding this, I took the opportunity to read the affidavits, bearing in mind that there was no possibility of a response to these being available to the BNZ. In any event, these additional affidavits have made no difference to the outcome in this case.

[10] In opposing the application, BNZ filed five affidavits in support. These were from Mr Peter Adamson (a BNZ employee), Mr Hamish Doig (a director of Colliers International which was engaged by BNZ to conduct the mortgagee sale), Mr Marius Ogg (a registered valuer), Mr Stephen Tubbs (one of the receivers of TVL), Mr Blake Cescon (a special counsel who is employed by BNZ's solicitors), and Mr Brian Ware (who addresses issues concerning service of the PLA notices).

Background facts

[11] The background facts to this matter are relatively straightforward and I now set them out briefly.

[12] But first, a preliminary issue arose before me which I briefly mention. This is the fact at present that there is apparently a separate proceeding between FTG and the BNZ on foot which deals with priority issues between them as first and second mortgagees over the property. I am satisfied, however, these issues are not relevant

to the current proceeding and there was no argument presented to me otherwise at the hearing of this application by Mr Ballantyne on behalf of FTG.

[13] In about 2007 BNZ advanced to TVL the sum of $7,500,000. Subsequently a mortgage priority interest was entered into together with a Priority Deed by which BNZ's mortgage over the property became a first mortgage and BNZ limited its priority to the sum of $7,500,000 plus 24 months' interest and costs.

[14] At some subsequent time, FTG acquired the second mortgage given by TVL over the property.

[15] The loan facilities by BNZ to TVL expired on 11 May 2009 and TVL defaulted in repayment of the facilities. Notices pursuant to ss 119 and 122 of the PLA were served by BNZ and on 27 July 2009 BNZ appointed Mr Stephen Tubbs and Mr Colin Gower as receivers and managers of TVL.

[16] BNZ commenced a mortgagee sale process with respect to the property in July 2010. This was in an endeavour to achieve a sale of the property by tender, with tenders closing on 3 September 2010. Three tenders were received but then the first Canterbury earthquake struck on 4 September 2010 which thwarted the process. While the damage was being assessed and the sale process reconsidered, the February 2011 Canterbury earthquake struck, further damaging the property in a substantial way. As I understand it, the property has remained unsuitable for occupation ever since.

[17] THIS PARAGRAPH IS REDACTED

[18] With the insurance dispute, to some extent, now resolved and agreed between the parties, BNZ elected to proceed with the mortgagee sale of the property on an "as is where is" basis. It engaged experienced commercial real estate property agents, Colliers International (Colliers), to conduct the sale. Colliers, it appears, recommended a sale by auction and, following a marketing campaign over a period of a little over four weeks, the mortgagee sale auction was scheduled to be held on 23 November 2016 at 10 a.m.

[19] So far as repayments are concerned, to date BNZ has received from TVL through its receivers payments totalling $6,500,000. The remaining TVL debt to BNZ currently stands at $5,570,487, which figure was not disputed before me in any real way. It does seem that there is a separate dispute between FTG and BNZ as to whether BNZ is required to deduct the receivership funds it has received to date from its priority sum under the earlier Priority Deed. That dispute however is separate to the issues in this present proceeding and it has no direct impact on them.

Legal framework

[20] The principles governing the granting of an interim injunction are well settled and are set out in *American Cyanamid Co v Ethicon Limited.*[1] In that case the Court posed the two broad questions that are involved as follows:

(a) Is there a serious question to be tried; and

(b) Where does the balance of convenience lie?

[21] In New Zealand, our Court of Appeal in *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*[2] reiterated however that these two heads are not exhaustive. The relative strengths of each party's case are to be considered and weighed within the ultimate search at a point and with an intensity that will vary according to particular circumstances.

[22] And in *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*[3] Cooke J (as he then was) in delivering the Court of Appeal's judgment suggested that the ultimate issue as to whether an injunction should be granted is where overall justice lies:

> Marshalling considerations under them is an aid to determining as regards the grant or refusal of an interim injunction, where overall justice lies. In every case the judge has finally to stand back and ask himself that question…

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1 *American Cyanamid Co v Ethicon Limited* [1975] AC396 (HL).
2 *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Limited* [1985] 2 NZLR 140 at 142.
3 Above n 2.

Is there a serious question to be tried?

(A) No longer a valid PLA notice in existence?

[23] In submitting there is a serious issue to be tried, FTG suggests in part that this relates to the question in the circumstances prevailing in the present case of whether there is a valid s 119 PLA notice in place such that BNZ can exercise its powers as mortgagee in respect of the property.

[24] Section 119 PLA provides:

> **119 Notice must be given to current mortgagor of mortgaged land of exercise of powers, etc**
>
> (1) No amounts secured by a mortgage over land are payable by any person under an acceleration clause, and no mortgagee or receiver may exercise a power specified in subsection (2), by reason of a default, unless—
>
> (a) a notice complying with section 120 has been served (whether by the mortgagee or receiver) on the person who, at the date of the service of the notice, is the current mortgagor; and
>
> (b) on the expiry of the period specified in the notice, the default has not been remedied.
>
> (2) The powers are—
>
> (a) the mortgagee's power to enter into possession of mortgaged land:
>
> (b) the receiver's power to manage mortgaged land or demand and recover income from mortgaged land:
>
> (c) the mortgagee's or receiver's power to sell mortgaged land.
>
> (3) Subsection (1) is subject to sections 125 and 126.
>
> (4) A notice required by this section may be given in the same document as a notice under section 118.

[25] In addition, s 121 PLA, which is also relevant here, provides:

> **121 Copy of notice under section 119 must be served on former mortgagor, covenantor, subsequent mortgagee, and caveator**
>
> (1) A copy of the notice served under section 119 must, as soon as possible, be served (whether by the mortgagee or receiver) on the

following persons if either the mortgagee or receiver has actual notice of the name and address of the person:

(a) any former mortgagor:

(b) any covenantor:

(c) any mortgagee under a subsequent mortgage, and any holder of any other subsequent encumbrance, over the mortgaged land if—

(i) the subsequent mortgage or other subsequent encumbrance is registered; or

(ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it; and

(d) any person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the mortgaged land or any part of it.

(2) A failure to comply with this section does not prevent—

(a) any amounts secured by the mortgage from becoming payable; or

(b) the exercise of the mortgagee's power to enter into possession of the mortgaged land; or

(c) the exercise of the receiver's power to manage the mortgaged land or demand and recover income from it; or

(d) the exercise of the mortgagee's or receiver's power to sell the mortgaged land.

(3) However, if there is a failure to comply with this section, the mortgagee is liable in damages for any loss arising from that failure.

[26] In this case BNZ relies on a s 119 PLA notice dated 24 June 2009, a copy of which it seems was served on the then second mortgagee, Canterbury Finance Limited at its registered office on 25 June 2009.

[27] FTG takes no challenge here to the form of the notice or its service. The issue it raises is whether that notice remains valid in the present circumstances. In this respect FTG argues that an unremedied notice cannot be effective indefinitely, and the current notice no longer accurately reflects the state of affairs for the property. This is because the land and buildings comprising the property were

substantially damaged in the 2010 and 2011 sequence of Canterbury earthquakes and a subsequent fire, and the material damage insurance claim by receivers of TVL has now been settled.

[28] It is claimed too that part of the property has been subsequently damaged again and part of it destroyed, and, as a result of the actions of the receivers of TVL and the BNZ, that damage, is uninsured. As a result, FTG suggests that BNZ as mortgagee must issue fresh s 119 and 121 PLA notices to reflect the current position.

[29] In reply, the BNZ notes that the PLA does not provide any timeframe for the validity of a s 119 notice nor any restrictions on the time within which a mortgagee is entitled to exercise its power of sale. Contrast that with other legislation imposing time limits, for example the provisions of s 288 of the Companies Act 1993.

[30] What does seem clear is first, that once the period specified in the s 119 PLA notice expires, a mortgagee's power to sell or enter into possession of mortgaged land becomes exercisable and secondly, that the authorities are clear a mortgagee is entitled to decide if and when to exercise its power of sale – *Wallace v Bank of New Zealand*.[4]

[31] Also, it seems by analogy that, if a mortgagor remedies a mortgage default specified in a PLA notice after the specified date for remedy, the power to sell or enter into possession still remains exercisable, unless there is a waiver of the power by the mortgagee – *Tea Custodians (Bluestone) Ltd v Barnett*.[5]

[32] I am satisfied the only possible argument that might be available to FTG in this case to require fresh PLA notices to be issued is an argument based upon estoppel or waiver. No such allegations however have been pleaded in FTG's statement of claim. In addition, no evidence has been advanced before the Court at this point by FTG which would be capable of supporting an argument based on estoppel or waiver here.

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4 *Wallace v Bank of New Zealand* (HC) Auckland CIV-2009-404-3534, 1 July 2009.

5 *Tea Custodians (Bluestone) Ltd v Barnett* (HC) Wellington CIV-2011-486-17, 6 October 2011.

[33] Generally I am satisfied that, the delay in bringing the property to a mortgagee sale from the time of issue of the original PLA notice is readily explained in the somewhat unusual circumstances of this case. These included the Canterbury earthquake sequence, the receivership of TVL, insurance negotiations and the like.

[34] But, in any event the requirement that, FTG as a second mortgagee of the property was to be served with a copy of the s 119 notice existed generally so that it was aware of default under the prior mortgage, and an impending mortgagee sale. This was so that it had the opportunity to protect its position. It could have done this by acquiring BNZ's security before the sale or by taking steps to remedy the default. It did not do so. In this case FTG cannot claim to have been taken by surprise by the mortgagee sale and indeed it was formally aware of the sale and the auction date over one month before it was due to take place.

[35] In addition and significantly, FTG clearly had an understanding of the amount owed by TVL to BNZ. Twice in the recent past FTG itself entered into agreements to purchase BNZ's debt and security interests in TVL but on each occasion it failed to complete those agreements. I am satisfied there can be no prejudice to FTG here as a result of the passage of time since the PLA notices were issued. If a fresh notice to TVL were to be required, this would not have told FTG anything it did not already know.

[36] Furthermore, even if there had been any representation or waiver by BNZ that it would not proceed in reliance on the s 119 notice, I am satisfied there has been no misunderstanding by, or detriment to, either the mortgagor TVL or indeed to FTG caused by the time that has elapsed in the interim.

[37] Lastly, s 121(2) of the PLA as I note at [25] above states:

> (2) A failure to comply with this section [regarding provision of a copy of a s 119 notice to a second mortgagee] does not prevent—
>
> (a) any amounts secured by the mortgage from becoming payable; or
>
> …

> (d) the exercise of the mortgagee's or receiver's power to sell the mortgaged land.

[38] This s 121(2), as I see it, assists too in providing an answer to FTG's allegation that a fresh s 119 notice should have been served on TVL in this case. And finally, this position it seems is also supported by reference to cl 22 of the Priority Deed which is before the Court relating to the mortgages here. (Given the outcome here, I need say nothing more on this aspect and also I leave on one side the question whether in any event that deed does apply between the parties as FTG itself seems to assert).

[39] For all these reasons I am satisfied that a valid s 119 PLA notice has been given here in terms of the PLA and provided to all required parties, such that this does not assist in FTG's present attack on the BNZ's mortgagee sale process.

(B) Breach of duty?

[40] A second aspect of FTG's injunction application is that it is alleges there is a serious issue to be tried insofar as it alleges BNZ is in breach of its duties as mortgagee in two respects:

(a) With reference to s 176 of the PLA, BNZ has breached its duty to "take reasonable precautions to obtain a proper price" for the property; and

(b) BNZ has breached its duty to use its powers as mortgagee for a proper purpose, and not to act in a manner which unfairly prejudices or wilfully and recklessly sacrifices the interests of FTG as second mortgagee of the property.

[41] Section 176 of the PLA provides:

> **176 Duty of mortgagee exercising power of sale**
>
> (1) A mortgagee who exercises a power to sell mortgaged property, including exercise of the power through the Registrar under section 187, or through a court under section 200, owes a duty of reasonable

care to the following persons to obtain the best price reasonably obtainable as at the time of sale:

(a) the current mortgagor:

(b) any former mortgagor:

(c) any covenantor:

(d) any mortgagee under a subsequent mortgage:

(e) any holder of any other subsequent encumbrance.

(2) A mortgagee who exercises a power to sell mortgaged property may not become the purchaser of the mortgaged property except in accordance with section 196 or an order of a court made under section 200.

[42] It goes without saying that at the time of the hearing of the present application, BNZ's proposed mortgagee sale of the property had not taken place. As to the timing of that mortgagee sale, the authorities are clear on two aspects. First, there is no obligation on a mortgagee to delay a sale to get a higher price. Secondly and equally, it has been held a mortgagee is not to be penalised for delaying the sale of a property to realise its security – see *Countrywide Banking Corporation v Robinson.*[6]

[43] And, in addressing the s 176 PLA need for a mortgagee to take "reasonable care to obtain the best price reasonably obtainable", in *Public Trust v Ottow*[7] Asher J summarised the factors that indicate a mortgagee has made reasonable efforts to obtain the best price obtainable as follows:

(a) The appointment of a reputable real estate agent to market the property.

(b) Obtaining a valuation report from an experienced valuer as a guide to what could reasonably be expected for the property.

(c) Marketing over a reasonably long period of time.

(d) An extensive advertising and promotional campaign.

(e) A properly conducted auction.

(f) A sale price that given all the circumstances can be reconciled with the expert opinion as to value.

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6 *Countrywide Banking Corporation v Robinson* [1991] 1 NZLR 75 (CA).

7 *Public Trust v Ottow* [2010] 10 NZCPR 879 at [31].

[44] In the case before me there does not seem to be any major objection from FTG as to BNZ's chosen mode of sale, that being auction. Nor is issue taken with the appointment of Colliers as the "reputable real estate agents" to market the property and conduct the sale. Evidence is before the Court too that a proper valuation report had also been obtained by BNZ.

[45] The main complaints from FTG appear to relate in part to the length of time for the marketing campaign for the sale of the property being limited to only about one month and also to that marketing campaign generally. On these timing aspects, FTG suggests there should have been at least a two week lead in time and a close date for the auction at least five – six weeks thereafter, to allow prospective purchasers to undertake due diligence. It is said too, that, professional reports for the property including updated structural and geotechnical engineering reports, quantity surveyor estimates and contamination reports should have been obtained and provided to prospective purchasers.

[46] These claims by FTG, in my view however, are largely unsupported by any compelling evidence here. Indeed they are also contradicted by significant evidence which is before this Court from Mr Doig, the director of Colliers, and other witnesses for the BNZ.

[47] I am satisfied here that the four weeks marketing period for the property linked with the detailed sales booklet for the property prepared by Colliers and its general advertising campaign was reasonable in all the circumstances. I say this given too that from the valuer's evidence it seems that largely it is the value of the land in this case which is likely to provide the major selling attraction.

[48] I do not accept that BNZ has failed to market the property in the sense that it has not carried out a reasonable marketing campaign for a proper period, nor that it failed to obtain and provide appropriate information for purchasers. In relying on the substantial professional advice it did to plan, schedule and carry out the mortgagee sale process at this point, I am satisfied it did not breach its obligations under s 176 of the PLA or otherwise. Of course, as I have noted, at the time of the

hearing of this application, the mortgagee sale auction had not taken place and so the ultimate outcome of the sale was not known.

(C) Duty of good faith

[49] In addition to this s 176 PLA duty, there still remains a broad equitable duty of good faith which applies to BNZ as mortgagee here –*De Spa v Lewis*.[8] Issues as to a mortgagee's alleged motive for selling a property by way of mortgagee sale become relevant.

[50] Recently, in the Court of Appeal decision in *Coltart v Lepionka*[9] the Court accepted that a mortgagee has a duty to act in good faith when exercising its power of sale. In particular, at [54] in that decision the Court said:

> [54] …However, the duty to take reasonable precautions to obtain a proper price is a component of the overall duty to act in good faith, extending to all those interested in the equity of redemption such as a purchaser. A mortgagee must use its powers for that predominant purpose, and not act in a manner which unfairly prejudices or wilfully and recklessly sacrifices the interests of the mortgagor or a party claiming through it.
>
> (Footnotes omitted)

[51] In the present case I am satisfied that there is no evidence before the Court of any ulterior motive in carrying out the present sale on the part of the BNZ as mortgagee. Despite accusations which have been made on behalf of FTG, the evidence in this case clearly shows that the BNZ in carrying out steps as mortgagee related to this sale has acted primarily for the purpose of recovering its long-standing debt owed by TVL. There is no evidence before me of any bad faith on the part of BNZ. Its primary objective, I am satisfied, is to obtain repayment of its debt and to realise the security it holds. The delay in this matter has illustrated little more than considerable patience on the part of the BNZ, following its attempts to achieve a mortgagee sale in 2010 which process was thwarted by the Canterbury earthquake sequence at that time. In my view, BNZ is entitled to certainty now by realising its security over the property to pay down what is substantial outstanding debt owed by TVL.

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[8] *De Spa v Lewis* [1993] 2 NZCONVC 191,610.
[9] *Coltart v Lepionka* [2016] NZCA 102.

Where does the balance of convenience lie?

[52] In this area I am satisfied, too, there is a reasonable argument that damages in this case would provide an adequate remedy to FTG, if it is established subsequently that they are a truly aggrieved party. In this case FTG has clearly been aware of TVL's long-standing default and the impending mortgagee sale, and, as I see it, they have had ample opportunity to acquire the debt and security interests of BNZ if they wished to do so.

[53] So far as the breach of duty allegations are concerned, even if they were to be established and the property was to be sold at an undervalue, any failure to obtain a higher price could be readily compensated by an award of damages – see *Bevan v Public Service Investment Society Ltd.*[10]

[54] It seems clear that what FTG actually wants is to acquire the property itself. Its present application, however, is not linked to that outcome, nor could it achieve that through this injunction process. An injunction therefore would be fruitless for FTG as it would only achieve delay and costs to BNZ.

[55] In reality, FTG's interest in the property is a purely financial one as second mortgagee. That interest is therefore a commercial one. If it is found that BNZ acted in any way improperly here, then that may be compensated in damages. As one of New Zealand's largest trading banks, there can also be no doubt whatever that if damages were to be awarded against BNZ they would be recoverable. On that point, it is useful at this point to note that FTG has itself provided to the Court the usual undertaking as to damages to support this injunction application. What is clearly required in addition, however, is the need for evidence to be provided as to the financial position of a plaintiff, such that the worth of the undertaking can be assessed. In this case there does not appear to be financial accounting detail for FTG provided to the Court and, although some unverified comments are made about FTG's asset position, it is arguable in my judgment that there has been insufficient verification of its ability to meet the damages undertaking. That, however, I find, is a side issue in this case. It means, too, that I leave to one side FTG's submission that

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[10] *Bevan v Public Service Investment Society Ltd* [1994] 2 NZ Conveyancing Cases 191,824 (CA).

the undertaking should not really have been required given all the circumstances prevailing in this case.

[56] Lastly, I note the submission advanced before me by counsel for the BNZ that, if the injunctions sought were to be granted, a serious risk exists that the current interest from potential mortgagee sale purchasers of the property might be lost. The evidence of Mr Doig from Colliers to the effect that certain possible purchasers have already been identified and intend to travel to Christchurch for the auction, is useful here. Further delays in the sale of the property too would increase costs and interest, not to mention the fact that the current auction marketing and sale costs would be lost.

[57] Whilst BNZ has received payments towards TVL's indebtedness over the course of the receivership, a substantial debt in excess of $5.5 million remains owing. As I understand it this includes costs incurred by BNZ in its enforcement processes to date exceeding $1 million. FTG, on the other hand, acquired its second mortgage interest in TVL I understand for $100,000 (with this sum also including the acquisition of debt and securities of two other related companies). FTG for some time has had the option of acquiring BNZ's debt and securities and indeed, as I have noted above, twice agreed to purchase these from BNZ but failed to satisfy the conditions relating to those purchase agreements. And in any event, FTG always has the option of purchasing the property itself at the mortgagee sale auction should it wish to do so. For all these reasons I am satisfied that the overall justice in this case strongly favours BNZ's position and requires denial of the interim injunction relief sought by FTG.

[58] I conclude that FTG has, by a significant margin, been unable to establish here that there is a serious issue to be tried and, further, that its injunction application must necessarily fail on the balance of convenience test which also, as I have noted above, weighs heavily in favour of the BNZ.

Conclusion

[59] For all the reasons I have outlined above, FTG's injunction application before me must fail. The injunction sought is refused.

[60] As to costs, as I indicated in my 22 November 2016 judgment in this proceeding, these should follow the event in the usual way and be awarded to BNZ for their successful opposition to the present application.

[61] In the event that counsel are unable to agree the question of costs between themselves then I direct that they are to file submissions (sequentially) which are to be referred to me and, in the absence of either party indicating they wish to be heard on the matter, I will decide the issue of costs based on the memoranda and material then before the Court.

…………………………………………
Gendall J

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