IN THE LAND COURT OF TONGA

NUKU'ALOFA REGISTRY LA 11 of 2006

BETWEEN : **AUSTRALIAN & NEW ZEALAND BANKING GROUP LTD.**

- ***Plaintiffs***

AND : **MUMUI TATOLA**

- ***Defendants***

BEFORE THE HON. JUSTICE ANDREW

Counsels : **Mr Tupou for applicant/plaintiff**
: **Mr Niu for respondent/defendant**

JUDGMENT

This is an application for summary judgment by the Plaintiff against the defendant.

This is a matter before the Land Court and the issue has arisen as to whether the Land Court has jurisdiction to grant summary judgment. The Land Court rules are silent as to the power to grant summary judgment as in ORDER 15 of the Supreme Court Rules, nor in the power for that matter, to enter judgment in default of defence as per ORDER 14 of the Supreme Court Rules. ORDER 2 Rule 2 of the Land Court Rules does provide that except in these rules, the procedures set out in the Supreme Court Rules shall apply.

Ultimately, however as to the issue of whether summary judgment is available in the present case, I find that I do not need to decide because even if it were to apply, I am satisfied that there are triable issues raised by the defendant and I am not satisfied that it has been shown that there is or can be no defence to the plaintiff's claim.

I do not set out all of the facts of the case but the defendant denies that there is a valid mortgage in this case. I think there are issues raised as to the validity of the mortgage. That may ultimately be shown to be incorrect but nevertheless in my opinion the defendant does raise issues in relation to the mortgage and he should be entitled to raise that defence. There are issues of fact raised as to the date that the defendant entered and took possession of the land of the lease involved and issues raised as to the validity of the lease. I do not think it can be said that the defendant does not have a "hope of winning". See SALVATION ARMY (TONGA) TRUST –v- NAU (2001) T. L. R. 66 at P 74.

For these reasons I do not think that this is a case where summary judgment should be entered and to put it in colloquial terms, the defendant is entitled "to have his day in court'

THE APPLICATION IS DISMISSED

I order that costs of this application be costs in the cause.

SUPREME COURT TONGA

Dated: 16 February 2009 **J U D G E**