IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA150/2024
[2025] NZCA 617

BETWEEN	LIYUN CHEN First Appellant
	LC1521319 DEVELOPMENT CO LIMITED Second Appellant
	RHC PROPERTY INVESTMENT LIMITED Third Appellant
	LIYUN CHEN AS TRUSTEE OF ROYALL FAMILY TRUST Fourth Appellant
AND	GOODMORE INVESTMENTS (NEW ZEALAND) LIMITED Respondent

Hearing:	18 February 2025
Court:	Katz, Grice and Powell JJ
Counsel:	M J Tingey and B Han for Appellants S C D A Gollin and H M Jaques for Respondent
Judgment:	26 November 2025 at 3.00 pm

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellants must pay the respondent costs and disbursements on an indemnity basis. Reasonable quantum is to be fixed by the Registrar in the event that counsel do not agree.

REASONS OF THE COURT

(Given by Katz J)

Introduction

[1] This is an appeal against a decision of Associate Judge Taylor in the High Court at Auckland, granting summary judgment in favour of the respondent, Goodmore Investments (New Zealand) Ltd (Goodmore).

[2] The proceeding originated from enforcement action taken by Goodmore against the appellants (Liyun Chen, LC1521319 Development Co Ltd (DevCo), RHC Property Investment Ltd (RHC), and Liyun Chen as trustee of the Royall Family Trust (together, the Borrowers)) who defaulted on a short-term, interest-only loan of $4,540,000 provided by Goodmore under a loan agreement dated 20 January 2021 (the Loan Agreement). Judgment was granted against the Borrowers for $766,282.21, being the shortfall owing after Goodmore had realised its security, plus continuing default interest at 24.2 per cent per annum.[1]

[3] The key issues raised by the appeal are whether the Judge erred in finding that it was not seriously arguable that:

(a) the Loan Agreement is a consumer credit contract under the Credit Contracts and Consumer Finance Act 2003 (CCCFA);

(b) Goodmore's conduct was oppressive under the CCCFA; and/or

(c) Goodmore breached its duties as mortgagee when exercising its power of sale of a secured property under s 176 of the Property Law Act 2007 (PLA).

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1 *Chen v Goodmore Investments (New Zealand) Ltd* [2024] NZHC 139 [judgment under appeal] at [121(b)].

Background

[4] The Borrowers are closely related. Ms Chen, an experienced property developer, was a director and shareholder of both RHC and DevCo at all relevant times.

The Loan Agreement and the Secured Properties

[5] Goodmore is a non-bank financier (sometimes referred to as a second-tier lender) that provides loans to construction companies and property developers. The Borrowers applied to Goodmore for a loan through "OneLend" (acting as a broker). The OneLend loan application identified the purpose of the loan as being to complete the subdivision of a property on Umbria Lane in Manukau. The document included the following background information regarding Ms Chen:

> The borrower has property development background in China. Has rich experien[c]e in property development business. Has New Zealand PR. The main business in New Zealand are land banking and purchase properties with developmen[t] potential or with further development potential[.]

[6] Goodmore made a loan offer to the Borrowers on 11 December 2020 and the Loan Agreement was signed on 20 January 2021. Goodmore agreed to provide short-term interest-only financing of up to $4,540,000 to repay previous short-term financing advanced by Vincent Capital Ltd, another non-bank financier. The lending was repayable 12 months after the first drawdown, with interest payable periodically at 9.2 per cent, with an additional 15 per cent per annum chargeable in the event of default. The full $4,540,000 was drawn down on 22 January 2021.

[7] The Borrowers' obligations were cross-guaranteed by each borrower pursuant to a Deed of Guarantee and Indemnity (Cross Guarantee). A general security agreement was also granted by DevCo, RHC and Ms Chen (as trustee of the Royall Family Trust). Registered mortgages were provided over the four properties being refinanced (together, the Secured Properties), namely:

(a) Jeffs Road, Flatbush, owned by Ms Chen in her capacity as trustee of the Royall Family Trust;

(b) Hillcrest Road, Orewa, owned by RHC;

(c) Umbria Lane, Flatbush, owned by DevCo; and

(d) Living Stream Road, Albany Heights, owned by DevCo.

[8] The Loan Agreement stated in cl 2.3 that:

> The Loan shall be used by the Borrower for the purposes of refinancing the [Secured Properties]. The Borrower shall not utilise the Loan for any other purpose without obtaining the prior written consent of the Lender.

Default under the Loan Agreement

[9] During the term of the loan, the Borrowers often failed to pay interest on time and, on expiry of the loan on 21 January 2022, they failed to repay the outstanding amount due. Default interest on the loan then started to accrue. On 22 April 2022, Goodmore made written demand on the Borrowers to pay the amount outstanding, being $4,814,917.47. The Borrowers failed to comply with the demand by its expiry on 11 May 2022.

[10] On 17 June 2022, at Ms Chen's request, Goodmore discharged the mortgages over the Jeffs Road and Living Stream Road properties, in exchange for a partial payment of $1,609,016.

[11] Notices under s 118 and 119 of the PLA were served on 27 June 2022. On 24 August 2022, Ms Chen paid a further $1,270,000 to Goodmore and the mortgage over the Hillcrest Road property was also discharged. This further payment reduced the outstanding loan balance to $2,262,366.63 and left the Umbria Lane property as the sole property securing the remaining loan balance.

[12] The PLA notices expired on 26 September 2022. Discussions regarding repayment of the outstanding balance of the loan continued, but no agreement was reached.

[13] On 21 November 2022, Goodmore's solicitors wrote to the Borrowers' solicitors providing a final opportunity to remedy the default by 31 January 2023, after

which Goodmore would exercise its power of sale of the remaining property (the Umbria Lane property) under the expired PLA notices.

Mortgagee sale of the Umbria Lane property

[14] The Borrowers did not remedy the default. Goodmore accordingly appointed Barfoot & Thompson as its agents to conduct a mortgagee sale process for the Umbria Lane property. Barfoot & Thompson conducted a four-weekend long intensive marketing process, detailed further below at [81]. Their initial appraisal recorded the market value of the property as $2 million, and the value at mortgagee sale as $1.6 million. This was later revised down in the final week of marketing, due to market conditions, to a market value of $1.73 million, and a mortgagee sale value of $1.4 million.

[15] Both Ms Chen and her ex-partner, Mr Lau, sought to prevent the sale but were unsuccessful.[2] Three tenders received by the closing date ranged from $500,000 to $1.6 million. Goodmore declined those offers. Eight weeks later, it accepted an offer of $2.15 million, with settlement taking place on 25 August 2023. After fees, Goodmore received $2,048,099.16 from the sale, leaving a shortfall owing on the loan of $808,792.16 (including legal fees) as at 25 August 2023.

High Court Proceedings

[16] Ms Chen and DevCo brought claims against Goodmore for breaches of the CCCFA, PLA, Companies Act 1993, Anti-Money Laundering and Countering Financing of Terrorism Act 2009, Fair Trading Act 1986 and Consumer Guarantees Act 1993.

[17] Goodmore sought defendant's summary judgment in respect of those claims and also counterclaimed in debt against the Borrowers for the amount outstanding under the Loan Agreement.

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2 *Chen v Goodmore Investments (New Zealand) Ltd* [2023] NZHC 1942 [judgment of Venning J]; and *Goodmore Investments (New Zealand) Ltd v Lau* [2023] NZHC 1983.

[18] Goodmore succeeded in obtaining summary judgment on its counterclaim and defendant's summary judgment in respect of the Borrowers' claims against it. Judgment was entered for Goodmore in the sum of $766,282.21 with interest at the rate of 24.2 per cent per annum.[3] We discuss the relevant reasoning of the High Court further below, in the context of the specific issues that arise on appeal.

Legal principles — summary judgment

[19] The principles applicable to both plaintiff's and defendant's summary judgments are well established. The onus was on Goodmore to show, on the balance of probabilities, that:

(a) Ms Chen and DevCo could not succeed on any of their pleaded causes of action;[4] and

(b) the Borrowers had no defence to Goodmore's counterclaim.[5]

[20] The Court will not attempt to resolve genuine conflicts of evidence or to assess the credibility of statements and affidavits.[6] The Court is entitled, however, to examine and reject spurious defences or plainly contrived factual conflicts. "It is not required to accept uncritically every statement put before it, however equivocal, imprecise, inconsistent with undisputed contemporary documents or other statements, or inherently improbable."[7] In other words, it can take a robust approach and enter judgment even where "there may be differences on certain factual matters if the lack of a tenable defence is plain on the material before the Court".[8]

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3 Judgment under appeal, above n 1, at [121(b)].

4 For a more detailed discussion of the principles relating to defendant summary judgment see: *Stephens v Barron* [2014] NZCA 82 at [9]; and *Westpac Banking Corp v M M Kembla New Zealand Ltd* [2001] 2 NZLR 298 (CA) at [61]–[68].

5 *Krukziener v Hanover Finance Ltd* [2008] NZCA 187, [2010] NZAR 307 at [26].

6 At [26], citing *Eng Mee Yong v Letchumanan* [1980] AC 331 (PC) at 341. See also *Partners Finance and Lease Ltd v Richmond* [2019] NZHC 34, [2019] NZAR 168 at [62(d)] and [64(c)], citing *Harry Smith Car Sales Pty Ltd v Claycom Vegetable Supply Co Pty Ltd* (1978) 29 ACTR 21 (SC).

7 *Partners Finance and Lease Ltd v Richmond*, above n 6, at [62(e)], citing *Attorney-General v Rakiura Holdings Ltd* (1986) 1 PRNZ 12 (HC). See also *Eng Mee Yong v Letchumanan*, above n 6, at 341; and *Pemberton v Chappell* [1987] 1 NZLR 1 (CA) at 4.

8 *Partners Finance and Lease Ltd v Richmond*, above n 6, at [62(g)], citing *Jowada Holdings Ltd v Cullen Investments Ltd* CA248/02, 5 June 2003 at [28]. See also *Keung v Connolly* [2023] NZHC 2381 at [24].

Is it arguable that the Loan Agreement is a consumer credit contract under s 11 of the CCCFA?

[21] The first issue on appeal is whether the Judge erred in finding the appellants' argument that the Loan Agreement was a consumer credit contract under s 11 of the CCCFA to be untenable. The significance of this issue is that, if the Loan Agreement is a consumer credit contract, Goodmore was required to meet the statutory disclosure obligations in respect of such contracts (which it did not). This would call into doubt Goodmore's entitlement to enforce the Loan Agreement or retain any interest charged under it.

Consumer credit contracts under the CCCFA

[22] The CCCFA applies to all credit contracts, or transactions that are in substance or have the effect of a credit contract. A credit contract is a contract under which credit is, or may, be provided.[9] Relevantly, "credit is provided under a contract if a right is granted by a person to another person to … incur a debt and defer its payment".[10]

[23] Credit contracts that are *consumer* credit contracts benefit from significantly stronger protections (including greater disclosure obligations) than most other credit arrangements. Consumer credit contract is defined in s 11, which sets out four cumulative criteria that must be satisfied:[11]

> **11 Meaning of consumer credit contract**
>
> (1) A credit contract is a **consumer credit contract** if—
>
> (a) the debtor[12] is a natural person; and
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> (b) the credit is to be used, or is intended to be used, wholly or predominantly for personal, domestic, or household purposes; and
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> (c) 1 or more of the following applies:
>
> (i) interest charges are or may be payable under the contract:

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9 Credit Contracts and Consumer Finance Act 2003, s 7.
10 Section 6(b).
11 Footnote added.
12 Debtor is defined in s 5 of the Credit Contracts and Consumer Finance Act and relevantly includes "a person to whom credit has been provided … under a credit contract".

…

(d) when the contract is entered into, 1 or more of the following applies:

(i) the creditor, or one of the creditors, carries on a business of providing credit (whether or not the business is the creditor's only business or the creditor's principal business):

…

[24] Other relevant provisions include:

(a) s 11(1A), which relevantly provides that for the purposes of subs (1)(b), the predominant purpose for which the credit is to be used is the purpose for which more than 50 per cent of the credit is intended to be used;[13]

(b) s 11(1B), which provides that the reference to intention in subs (1)(b) and (1A) is a reference to the debtor's intention; and

(c) s 15, which relevantly provides that "a credit contract under which the debtor is a trustee acting in his or her capacity as a trustee of a family trust" is not a consumer credit contract.[14]

[25] Finally, s 13 contains an important presumption:

13 Presumption relating to consumer credit contract

In any proceedings in which a party claims that a credit contract is a consumer credit contract, it is presumed that the credit contract is a consumer credit contract unless the contrary is established.

The High Court decision

[26] It is common ground that the criteria in s 11(1)(c) and (d) are met. The dispute focuses on whether the criteria in s 11(1)(a) and (b) are also met.

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13 Section 11(1A)(a).
14 Section 15(1)(c).

[27] The Judge rejected Ms Chen's argument that the Loan Agreement was a consumer credit contract and that the disclosure obligations in the CCCFA therefore applied.[15] He found that there was no consumer credit contract, because the debtor was not a natural person and the credit provided was not intended to be used wholly or predominantly for personal, domestic or household purposes.[16] Rather, the evidence indicated that the loan was used to refinance properties, including three investment properties, specifically excluded under the CCCFA.[17] Hence the criteria in s 11(1)(a) and (b) were not met.

The section 11(1)(b) argument

[28] We deal first with the appellants' s 11(1)(b) argument — namely that the Judge erred in finding that it was not seriously arguable that the credit was used, or intended to be used, wholly or predominantly for personal, domestic, or household purposes.

[29] Ms Chen had owned the Jeffs Road property in her personal capacity before it was transferred to the Royall Family Trust at the time of the refinancing by Goodmore. Given this context, Mr Tingey, for Ms Chen, argued that the portion of the loan that was used to refinance the Jeffs Road property was, in effect, a loan to a natural person (Ms Chen) to repay a personal mortgage debt to the previous lender (Vincent Capital). The overall lending was therefore for mixed purposes — a personal purpose as well as business purposes. Mr Tingey submitted that mixed loans should be classified as consumer credit contracts, or (at the very least) the relevant part of such loans should be so classified, as the purpose of the CCCFA would be undermined if lenders could avoid its consumer protection provisions by bundling a personal loan with a business or investment loan.

[30] In respect of the Umbria Lane and Hillcrest Road properties, Mr Tingey noted that Ms Chen had previously owned both of those properties at some stage. Given her close association with RHC and DevCo (the current owners of those properties) he submitted that the Court should infer that she would have guaranteed their loan obligations to Vincent Capital. If so, she would also have received a personal benefit

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15 Judgment under appeal, above n 1, at [84].
16 At [83].
17 At [83(b)]; and Credit Contracts and Consumer Finance Act, s 12.

(the discharge of her obligations as guarantor) when Goodmore refinanced those properties. Given the absence of any evidence to support such an inference, however, we are not prepared to draw it and do not consider this aspect of the argument further.

[31] In our view, the argument that the portion of the loan relating to the Jeffs Road property was for personal purposes because the effect of the refinancing was to discharge Ms Chen's personal liability to Vincent Capital (assuming she had such a liability — we have not seen the relevant loan document) is misconceived.

[32] The record of title for the Jeffs Road property shows that it was purchased by Ms Chen in 2012, and successively mortgaged to the Bank of New Zealand, DBR Ltd and then Vincent Capital. At 5.55 pm on 22 January 2021 the mortgage to Vincent Capital was discharged, the property was transferred to Ms Chen (in her capacity as trustee of the Royall Family Trust) and the mortgage to Goodmore was registered.

[33] In substance, therefore, Goodmore's loan was used to enable Ms Chen (as trustee of the Royall Family Trust) to fund the purchase of the Jeffs Road property from Ms Chen in her personal capacity. As the Judge observed, s 15(1)(c) of the CCCFA explicitly states that a credit contract where the debtor is a trustee acting in that capacity is not a consumer credit contract.[18]

[34] In any event, even if it were arguable that the portion of the loan relating to the refinancing of the Jeffs Road property was for Ms Chen's personal benefit, the criterion in s 11(1)(b) would still not be met, as it is clear that the Goodmore loan was not to be used, or intended to be used, *wholly or predominantly* for personal, domestic, or household purposes.

[35] The Loan Agreement specified the purpose of the loan as being:

> **2.3** **Purpose:** The Loan shall be used by the Borrower for the purposes of refinancing the Properties. The Borrower shall not utilise the Loan for any other purpose without obtaining the prior written consent of the Lender.

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[18] At [83(a)].

[36] Only one of the four properties securing the loan (Jeffs Road) was residential, and the portion of the loan used to refinance that property was significantly less than 50 per cent of the total loan amount (being approximately 10 to 11 per cent of the total loan amount). Specifically, the OneLend loan application valued: Jeffs Road at $1,150,000; Hillcrest Road at $4,725,000; Umbria Lane at $3,075,000; and Living Stream Road at $1,140,000. Similarly, the mortgage priority amounts (including interest and costs) were: $1,500,000 for Jeffs Road; $7,000,000 for Hillcrest Road; $5,000,000 for Umbria Lane; and $1,500,000 for Living Stream Road.

[37] DevCo and RHC were companies in the business of land banking and property development. DevCo owned the Umbria Lane and Living Stream Road properties. DevCo intended to subdivide the Umbria Lane property into a number of lots, two of which had been conditionally pre-sold. The Living Stream Road property was Albany lifestyle land which the loan application stated was a "[g]ood lo[cati]on with beautiful views". RHC owned the Hillcrest Road property, which appears to have been a land banking property, as the loan application recorded that it had been on-sold for $7.8 million, with the sale to be settled in two years' time.

[38] Hence three of the four refinanced properties were owned by property development companies and the intentions for those properties were commercial, focusing on land banking, property development, subdivision, and investment. This is also reflected in the appellants' statement of claim, which seeks damages of $11 million in reliance on the alleged development potential of the Umbria Lane property, specifically its subdivision into multiple lots. Damages were calculated on the basis of the losses Ms Chen claims to have suffered as a result of that development not proceeding.

[39] Given this context, the predominant purpose test in s 11(1A), which requires more than 50 per cent of the credit to be for personal use, is clearly not met. Rather, the loan was provided for predominantly commercial purposes. As the Judge noted, s 12 (which is headed "Investment purposes") explicitly states that: "Investment by the debtor is not a personal, domestic, or household purpose".[19]

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19 At [83(b)].

[40] We reject the appellants' submission that a credit contract can or should be divided into two or more hypothetical separate contracts, where the loan is intended to be used for mixed commercial and personal purposes. The CCCFA consistently characterises the relevant contract, or transaction, as an indivisible whole. This is apparent in s 11 itself, which provides that in determining whether a contract is a consumer credit contract it is necessary to look at the *predominant* purpose for which the credit is to be used.[20] Various other provisions also clearly characterise the relevant contract or transaction as an indivisible whole, including s 7 (meaning of credit contract); s 11 (meaning of consumer credit contract); and s 17 (initial disclosure). There is nothing to suggest that the CCCFA envisages that a single contract can or should be treated, in effect, as two separate contracts when it is used for mixed purposes, with parts of the same loan being subjected to two different statutory regimes.

[41] The Judge was accordingly correct to find that the presumption in s 13 had been rebutted. The predominant purpose of the loan was commercial. It is not seriously arguable that the loan was "wholly or predominantly" for personal, household or domestic purposes and s 11(1)(b) is accordingly not satisfied.

[42] As all four of the requirements in s 11(1) must be met in order for a contract to be a consumer credit contract, it is not necessary for us to consider whether it is arguable that "the debtor" for the purposes of s 11(1)(a) was a natural person. As the requirement in s 11(1)(b) is not met, this ground of appeal necessarily fails.

Is it arguable that Goodmore engaged in oppressive conduct?

[43] The next issue on appeal is whether the Judge erred in finding that it was not arguable that Goodmore had engaged in oppressive conduct for the purposes of the CCCFA.

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[20] Credit Contracts and Consumer Finance Act, s 11(1)(b).

Oppression under the CCCFA

[44] Under pt 5 of the CCCFA the court has the power to reopen all oppressive credit contracts. Specifically, under s 120(b) the court may reopen a credit contract if it considers a party has exercised a right or power conferred by the contract in an oppressive manner. Oppressive is defined to mean "oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice".[21] It is a high threshold. There must be something more than mere unfairness or a consequence that is generally associated with the exercise of a remedy by a creditor.[22]

[45] One of the factors the Court is required to take into account in deciding whether to reopen a credit contract is whether the contract is a consumer credit contract,[23] reflecting that the primary purpose of the CCCFA is to "protect the interests of *consumers* in connection with credit contracts, consumer leases, and buy-back transactions of land".[24] Nevertheless, the Court is also able to reopen a commercial contract, although oppressive conduct will often be significantly more difficult to establish in an arm's length commercial context.

The High Court decision

[46] Ms Chen's primary allegation of oppressive conduct in the High Court was that, prior to the expiry of the loan, she had requested Goodmore to discharge its security over the Umbria Lane property so that she could refinance it with another lender in order to progress the development. Ms Chen claimed that Goodmore's failure to agree to this was oppressive and had delayed the development and thereby caused or contributed to the Borrowers defaulting on the loan.[25]

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21 Section 118.

22 *Bank of New Zealand Ltd v Fernando* [2021] NZHC 2595 at [83], citing *Shotter v Westpac Banking Corp* [1988] 2 NZLR 316 (HC) at 322; *AXA New Zealand Nominees Ltd v 10 Gilmer Ltd (in rec)* HC Wellington CIV-2011-485-1572, 6 December 2011 at [24]; and *Italia Holdings (Properties) Ltd v Lonsdale Holdings (Auckland) Ltd* [1984] 2 NZLR 1 (HC). See also *Taylor v Westpac Banking Corporation* (1996) 7 TCLR 177 (CA) at 184.

23 Credit Contracts and Consumer Finance Act, s 124(1)(e).

24 Section 3(1) (emphasis added).

25 Judgment under appeal, above n 1, at [91].

[47] Ms Rongjun Zhang, Goodmore's sole director and shareholder, deposed that she had no recollection of any request from Ms Chen to discharge the security on the Umbria Lane property prior to the loan's expiry. She referred to WeChat messages of 2 and 3 February 2022, in which Goodmore's broker communicated to Ms Chen's broker that Goodmore was not prepared (at that time) to agree to a partial discharge of the Jeffs Road property, but no reference was made to any similar request in respect of the Umbria Lane property.

[48] Ultimately, the Judge rejected the allegation of oppressive conduct, as follows:[26]

> (a) There is no convincing evidence of the request to have the Umbria Lane Property released having been made. Ms Chen asserts the request was made to Goodmore's manager but there is no evidence of this. More importantly, even if a request was made, Goodmore declining it, in my view, would not have been oppressive under the CCCFA. At the time of the request, a significant portion of the loan was owing and there is no evidence of the Borrowers offering a substantial payment for release of the Umbria Lane Property, as had been the case in respect of the release of the Jeffs Road and Living Stream Road properties.
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> (b) I am of the view that Goodmore, as mortgagee, was entitled to make its own assessment as to its security position and the value of the respective security properties relative to the obligations of the Borrowers remaining outstanding for under the Loan Agreement. There is no authority put forward by Ms Chen that Goodmore was under any duty to release its security in any particular manner (except if an equity of redemption was being exercised, which it was not).

The appellants' submissions

[49] In their written submissions, the appellants submitted that Goodmore acted oppressively in two respects:

> (a) Goodmore refused to agree to discharge the mortgage on the Umbria Lane property prior to full repayment of the loan, which prevented third party development financing being secured and thereby delayed the development and subdivision of the property (which Ms Chen says would have repaid Goodmore's loan); and

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[26] At [94(a)–(b)].

(b) Goodmore failed to advance further development funding of $1 million to develop the Umbria Lane property, which Mr Lau deposed had been agreed on the basis that Ms Chen would not claim a GST refund on the Secured Properties.

[50] In oral submissions Mr Tingey also raised a new ground of oppression — that the interest rate charged on the loan was oppressive.

Did Goodmore act oppressively by refusing to discharge the mortgage on the Umbria Lane property?

[51] Very little detail has been provided, and no documents, to support Ms Chen's allegation that she requested Goodmore to discharge the mortgage over the Umbria Lane property to enable it to be refinanced, but Goodmore refused.

[52] The appellants' statement of claim alleges that Goodmore refused the request on the basis that the Umbria Lane property provided the most valuable security and would therefore only be discharged once the loan was repaid in full.

[53] As noted above, the Judge found that there was no convincing evidence that such a request had been made. Ms Jaques, for Goodmore, supported that finding, and noted that Ms Chen's credibility has been questioned in other proceedings.[27]

[54] We put to one side any adverse credibility findings that have been made in other proceedings. The Judge was, however, entitled to have regard to the lack of detail provided by Ms Chen to support this claim, and the total lack of any supporting contemporaneous documentation or other evidence. This can be contrasted with the requests made by Ms Chen to discharge the mortgages over the Jeffs Road and Living Stream Road properties, both of which are evidenced by contemporaneous documentation. There is no written record of a similar request in respect of the Umbria Lane property. Nor is there any evidence that a third-party financier had committed (as at January 2022) to not only refinancing the existing borrowing, but

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[27] Citing *Chen v Tawa Trade Finance Ltd* [2024] NZHC 410; and *Chen v Tawa Trade Finance Ltd* [2023] NZHC 2156.

also providing development financing (in a context where the resource consent for the proposed development was due to expire in May 2022).

[55] Even if we were to accept, however, that there is a genuine factual dispute as to whether Ms Chen requested that the mortgage over the Umbria Lane property be discharged prior to expiry of the loan, that would not assist the appellants. The loan was provided by a commercial lender to an experienced property developer. At the time of the request (whether it was before or after the expiry of the loan) the Borrowers were already in default. The lender's refusal to discharge part of its security prior to full repayment of the loan, in the circumstances of this case, falls far short of potentially meeting the threshold of being conduct that is "oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice".[28] Rather, as the Judge found: "Goodmore, as mortgagee, was entitled to make its own assessment as to its security position and the value of the respective security properties relative to the obligations of the Borrowers remaining outstanding for under the Loan Agreement."[29]

[56] Goodmore ultimately agreed to discharge its security over other properties (Jeffs Road and Living Stream Road for $1,609,016, and Hillcrest Road for $1,270,000) in return for partial payments during 2022, but (if the appellants' evidence is accepted) was unwilling to grant a similar discharge over Umbria Lane. These types of commercial decisions, relating to its security position, were entirely matters for Goodmore. The Judge was correct to find that it is not seriously arguable that any refusal to discharge the security over Umbria Lane, prior to full repayment of the outstanding balance of the loan by the appellants, could constitute oppressive conduct in terms of the CCCFA. This ground of appeal accordingly fails.

Did Goodmore act oppressively by refusing to provide further development funding?

[57] On appeal, Mr Tingey relied on a further (and seemingly new) ground of oppression, namely that Goodmore had acted oppressively by reneging on an offer to

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28 Credit Contracts and Consumer Finance Act, s 118.
29 Judgment under appeal, above n 1, at [94(b)].

provide an additional $1 million in development funding for the Umbria Lane property. This argument is based on the affidavit of Mr Lau, who deposed that:

> After the loan drawdown, [Goodmore] refused the further development funding of some 1 million to develop [the Umbria Lane property] that verbally agreed by [Goodmore] thru the mortgage broker that representing [Goodmore] after Ms Chen in return verbally agreed not to claim GST on all the properties that under the loan.

[58] The Judge referred to this evidence in passing, as part of the broader factual context,[30] but Ms Chen does not appear to have relied on this allegation as a discrete ground of oppression in the High Court.

[59] Mr Lau's allegation was not referred to in either the original statement of claim or the amended statement of claim, or in the appellants' notice of opposition to Goodmore's summary judgment application. Nor is it addressed in Ms Chen's evidence. No contemporaneous documents have been provided to support it. Accordingly, the only evidence for such an agreement is the brief passage of Mr Lau's evidence quoted above, which is entirely lacking in detail and appears to be hearsay (assuming that the alleged conversation was between Goodmore's mortgage broker and Ms Chen).

[60] The existence of this alleged verbal agreement is strenuously denied by Goodmore. Ms Jaques noted that Mr Lau's credibility has been questioned in other proceedings, in similar circumstances, and submitted that his evidence is "not sufficiently reliable" to substantiate this claim.[31]

[61] We put to one side any credibility findings that have been made against Mr Lau in other proceedings. Nevertheless, we accept Ms Jaques' submission that, in the context of this proceeding, little if any weight can be placed on Mr Lau's hearsay assertion of an (unpleaded) verbal agreement. The allegation is implausible and

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30 At [43].

31 Citing *General Finance Limited v Lau* [2023] NZHC 3417 at [10]–[12] and [18] in which Whata J recorded that he did "not consider Mr Lau or his account to be credible"; *Lau v Osborne* [2017] NZHC 2874; and *Lau v Auckland Council* [2016] NZEnvC 145 at [22]–[23].

inconsistent with other allegations and the contemporaneous documents, including that:

(a) The loan was for a short-term, interest-only, 12-month refinancing. This context is inconsistent with a verbal agreement to provide ongoing development funding that might necessitate a longer relationship between the parties.

(b) It is implausible that Goodmore would carefully document the $4.5 million loan in the Loan Agreement but simply agree verbally, without any documentation at all, to make available a further $1 million for development funding.

(c) The allegation is inconsistent with another assertion made by the appellants, namely that a different deal was reached prohibiting the corporate appellants from claiming a GST refund because the loan was for domestic purposes only.

[62] As noted at [20] above, the Court is entitled to examine and reject spurious defences or plainly contrived factual conflicts. It is not required to accept uncritically every statement put before it, however equivocal, imprecise, inconsistent with undisputed contemporary documents or other statements, or inherently improbable.[32] Mr Lau's unpleaded assertion falls within this category and the Judge was correct to give it no weight and to find that it cannot give rise to an arguable claim of oppression. In any event, as Ms Jaques submitted, it is doubtful that the alleged conduct would give rise to an oppression claim under the CCCFA in relation to the Loan Agreement. Rather, on the appellants' case, there was a *separate* verbal agreement to advance a further $1 million loan, which Goodmore allegedly breached.

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[32] *Partners Finance and Lease Ltd v Richmond*, above n 6, at [62(e)], citing *Attorney-General v Rakiura Holdings Ltd*, above n 7. See also *Eng Mee Yong v Letchumanan*, above n 6, at 341; and *Pemberton v Chappell*, above n 7, at 4.

Was the default interest rate on the loan oppressive?

[63] In oral submissions Mr Tingey raised a new ground of oppression, namely that the default interest rate charged on the loan was oppressive, especially when considered in combination with the loan fees. Specifically, the standard interest rate on the loan was nine per cent which, on default, increased by a further 15 per cent. Mr Tingey submitted that this was oppressive in the context of property lending secured by first mortgages over property.

[64] Mr Gollin, also for Goodmore, took issue with this new ground of appeal being raised at such a late stage, noting that the claim that the interest rate was oppressive was not raised in the High Court, did not form part of the judgment, was not a ground of appeal and was ambiguously pleaded at best.

[65] In our view Mr Gollin's criticisms are well founded, and it was prejudicial to Goodmore for this issue to be raised so belatedly. Had it been properly pleaded, and advanced in the High Court, Goodmore would have had an opportunity to adduce evidence regarding the default interest rates generally charged by second-tier lenders. There is no such evidence before the Court, from either party. In the circumstances, even if we were prepared to consider this proposed new ground of appeal on its merits, we would not have been satisfied that the evidence before the Court establishes an arguable ground of oppression in relation to the default interest rate specified in the Loan Agreement.

[66] The lack of any expert evidence on what would be normal interest rates for a second-tier financier is notable and problematic. Mr Tingey submitted, in effect, that the Court should rely on its own knowledge and experience to infer that it was arguable that the interest rates were oppressive. He included some calculations in his submission in which he adjusted the contractual interest rate to include the fees and submitted that the resulting interest rate was oppressive. Such an approach was overly simplistic and unpersuasive. The fees are quite different to the interest rates and have a different purpose, particularly given the short-term loan context. Further, as Mr Jaques pointed out, Mr Tingey's calculations were seriously flawed and involved double counting. Mr Tingey did not take issue with this in his reply submissions.

[67] In conclusion, even if we were prepared to grant leave to the appellants to belatedly raise this ground of appeal (which we are not), on the evidence before us we would not have been persuaded that it is seriously arguable that the interest rates included in the loan agreement are oppressive.

Is it arguable that Goodmore breached its duty under s 176 of the PLA?

[68] The third and final issue on appeal is whether the Judge erred in finding the argument that Goodmore had breached its duty under s 176 of the PLA to be untenable.

Section 176 of the PLA

[69] Under s 176(1) of the PLA, Goodmore owed a duty of reasonable care to the appellants to obtain the best price reasonably obtainable at the time of sale of the Umbria Lane property. The scope of the duty under s 176 is well-established through decisions of the High Court, and was the subject of consideration by this Court in *Long v ANZ National Bank Ltd*.[33] White J summarised the relevant principles to that case as follows:[34]

> (a) The statutory obligation is not to obtain the best price reasonably obtainable, but to take reasonable care to obtain the best price reasonably obtainable. That price might not necessarily be obtained.
>
> (b) When the property is sold in a forced sale, such as at a mortgagee sale, it is likely to sell at a substantial discount from the market value that the property would achieve in a sale undertaken by an owner not under financial pressure to sell.
>
> (c) Valuations lose much of their significance if reasonable care is taken, there has been a properly advertised and conducted auction, and the property has been sold at auction or by negotiation after the auction.
>
> (d) What constitutes reasonable care will always turn on the facts of the case. The steps taken by the mortgagee in fulfilling the statutory duty have to be looked at in the round.

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[33] *Long v ANZ National Bank Ltd* [2012] NZCA 132, citing *Harts Contributory Mortgages Nominee Co Ltd v Bryers* HC Auckland CP403-IM00, 19 December 2001 at [43]; *Crown Money Corporation Ltd v Pink-Martin* HC Auckland CIV-2008-404-297, 5 September 2008 at [32]; *Public Trust v Ottow* (2009) 10 NZCPR 879 (HC) at [17]; *Ibanez Ltd v Westpac New Zealand Ltd* HC Auckland CIV-2011-404-5263, 1 December 2011 at [83]; and *Westpac New Zealand Ltd v Lamb* [2012] NZHC 319 at [34].

[34] *Long v ANZ National Bank Ltd*, above n 33, at [21].

(e) In considering the reasonableness of the care taken, the courts should be slow to second guess the actions of a mortgagee acting on apparently sound professional advice.

[70] In *Public Trust v Ottow*, Asher J set out a useful summary to assist in assessing whether a mortgagee has made reasonable efforts to obtain the best reasonably obtainable price and thus complied with its duty under s 176. That Court noted that a mortgagee is "not a trustee of the power of sale of the mortgagor".[35] However, a mortgagee is not entitled to sell in a hasty way at a knock-down price sufficient to pay the debt, which because of the speed of sale leads to a lower price than could otherwise be obtained,[36] and proper care must be taken to expose the property to the market and to obtain the best price reasonably obtainable.[37]

[71] Ultimately, what constitutes reasonable care will turn on the facts of the specific case before the Court. The steps taken by the mortgagee in fulfilling the statutory duty have to be looked at in the round.[38]

The High Court decision

[72] The Judge concluded that when assessing Goodmore's actions in relation to the mortgagee sale of the Umbria Lane Property, there was no tenable claim or defence available to Ms Chen and DevCo that Goodmore failed to take reasonable steps to obtain the best price reasonably obtainable under s 176 of the PLA. He summarised his reasons for this conclusion as follows:[39]

(a) Goodmore engaged Barfoot & Thompson, an experienced and reputable real estate agent, to conduct the mortgagee sale process. From the steps taken … the marketing campaign undertaken by Barfoot & Thompson was reasonable to obtain the best price reasonably obtainable. As has been noted, the length of the marketing campaign and the absence of a registered valuation are not grounds in themselves to establish a breach of s 176 by Goodmore. In any event, the Umbria Lane Property was in fact marketed for approximately 10 weeks, with marketing continuing for approximately six weeks after the tender process concluded.

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35 *Public Trust v Ottow*, above n 33, at [17].

36 At [17(h)], citing *Palk v Mortgage Services Funding Plc* [1993] Ch 330 (CA) at 337–338.

37 *Public Trust v Ottow*, above n 33, at [17(i)], citing *Harts Contributory Mortgages Nominee Co Ltd v Bryers*, above n 33, at [43(d) and (f)].

38 *Westpac New Zealand Ltd v Lamb*, above n 33, at [34(e)], citing *Apple Fields Ltd v Damesh Holdings Ltd* [2001] 2 NZLR 586 (CA) at [50].

39 Judgment under appeal, above n 1, at [100].

(b) There is no valuation evidence put forward by Ms Chen or DevCo. In the absence of the February 2022 valuation she referred to in submissions being submitted as evidence, it cannot be given any weight by the Court.

(c) The allegation by Ms Chen that the Umbria Lane Property was not marketed properly to the international market is not supported by any evidence. There is no evidence of international buyers who would have paid a higher price than that accepted by Goodmore, and there is no evidence that international buyers were not able to access the property through websites.

(d) The marketing campaign conducted by Barfoot & Thompson resulted in a final price being achieved that significantly exceeded the assessed value of the Umbria Lane Property.

The appellants' submissions

[73] Mr Tingey submitted it is not sufficient for a mortgagee to discharge its s 176 duty by simply leaving the sale in the hands of reputable real estate agents. Hence, the Judge's reliance on the appointment of an experienced and reputable agent as one of the reasons for his conclusion that s 176 was not breached was misplaced.

[74] Mr Tingey further submitted that the marketing process for the Umbria Lane property was deficient in a number of respects, resulting in a sale at a significant undervalue. The appellants acknowledged that no copy of the February 2022 valuation had been put in evidence in the High Court, but nevertheless submitted that the Judge erred by not considering that valuation, as Goodmore had admitted in its pleading that the Umbria Lane property had been valued by Greenland Valuers on 10 February 2022 at $5.05 million for mortgage security purposes. Mr Tingey noted that the eventual sale price of $2.15 million was "less than half" of this. He argued that such a large discrepancy in value over a short period should have raised concerns about the low sale price. Mr Tingey accepted that a mortgagee sale for a price less than the current market value assessed by valuers does not, of itself, establish a breach of duty, but submitted that nevertheless a large discrepancy may indicate a failure to take reasonable care.[40]

[40] Citing *Moritzson Properties Ltd v McLachlan* (2001) 9 NZCLC 262, 448 (HC) at [61].

[75] He further submitted that proper care must be taken to expose the property to the market and to obtain the best price reasonably obtainable[41] and that Goodmore did not adduce sufficient evidence of such care. Specifically, it did not obtain a registered valuation before the property was sold at mortgagee sale. Although previous "internal valuations" had been made by Barfoot & Thompson, Mr Tingey submitted that these were unrealistically low, when compared to the 2022 registered valuation. Further, he submitted that the property was only marketed for three weeks, not the four weeks recommended by the agents, and that the level of advertising was insufficient.

[76] As for the marketing proposal prepared by Barfoot & Thompson, Mr Tingey submitted that this did not factor in the two earlier pre-sales of parts of the property or the resource consent previously granted. Specifically, there were two pre-sales for $1.75 and $1.78 million, with four more unsold lots said to be worth between $1.8 and $2.2 million. Despite that, Barfoot & Thompson said it could not find any comparable sales in the area and concluded that each lot would sell in the $1.1 million range, including GST. As a result, the property was marketed at too low a price. Mr Tingey submitted that the present case is analogous to *Cuckmere Brick Co Ltd v Mutual Finance Ltd* where non-advertisement of the fact that permission had been obtained to use the mortgaged land for high density development, together with expert independent valuation evidence as to gross inadequacy of price were together sufficient to establish breach of the duty owed to the mortgagor.[42]

[77] Finally, Mr Tingey repeated the submission made in the High Court that marketing should have been carried out overseas.

Our view

[78] In our view the Judge was correct to find that it was not seriously arguable that Goodmore had breached its duty of reasonable care under s 176 of the PLA, on the evidence before the Court.

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41 Citing *Harts Contributory Mortgages Nominee Co Ltd v Bryers*, above n 33, at [43(d) and (f)].
42 *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949 (CA).

[79] The Judge was entitled to have regard to the fact that Goodmore engaged Barfoot & Thompson, a reputable real estate agent with significant experience in conducting mortgagee sales. Obviously, appointing a competent agent does not in itself discharge the mortgagee's duties, but given that the duty is ultimately one of reasonable care, putting the matter in the hands of an experienced and competent agent will usually go a long way towards discharging the mortgagee's duties.[43] The Court should generally not be asked to second guess the actions of a mortgagee acting on sound professional advice.[44] The appointment of a reputable real estate agent to market the property and a comprehensive marketing campaign (discussed further below) will generally tend to indicate that a mortgagee has made reasonable efforts to obtain the best price reasonably obtainable.[45]

[80] Goodmore followed the recommendations of its sales agent. It instructed Barfoot & Thompson to commence marketing for sale by tender around 8 March 2023 and the tender process was set to close on 18 April 2023. Barfoot & Thompson appraised the Umbria Lane Property as having a market value of $2 million and a mortgagee sale value of $1.6 million (both inclusive of GST). This equated to $1.73 million and $1.4 million excluding GST, respectively. Following the marketing campaign Barfoot & Thompson advised that a figure "in the $1,200,000 range" (excluding GST) may need to be considered, taking market feedback into account.

[81] Online advertisements were placed between 25 March and 13 April 2023, a period of three and a half weeks. In addition, there were four weekends of print marketing appearing in the New Zealand Herald newspaper. Overall, the marketing campaign appears to have been comprehensive, including advertisements in major hard copy and digital property publications. The campaign generated substantial exposure, including 2,647 views of online advertisements, 23 enquiries, and 10 prospective buyers.

[82] When the initial tenders closed on 18 April 2023, the offers received ranged between $500,000 and $1.6 million, albeit the highest offer was conditional on due

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43 *Harts Contributory Mortgages Nominee Co Ltd v Bryers*, above n 33, at [43(c)].
44 *Taylor v Westpac Banking Corporation*, above n 22, at 182.
45 *Public Trust v Ottow*, above n 33, at [31].

diligence and with no deposit payable until the sale was unconditional. Goodmore declined to accept any of the tender offers and instead held out for a higher price for a further eight weeks. The eventual sale price of $2.15 million significantly exceeded both Barfoot & Thompson's assessed value of the property and the highest initial tender received.

[83] Turning to the purported February 2022 valuation relied on by the appellants, it was not in evidence in the High Court and no application was made to adduce it in evidence before us. It can therefore be given limited weight, as the assumptions underpinning that valuation (including in relation to the development potential of the property) are not in evidence. Further, any valuation undertaken in February 2022 was conducted 14 months prior to the sale of the property and would not have accurately reflected the characteristics of the property at the time of sale in June 2023, as the subdivision resource consent had expired around May 2022. In addition, there was a general downturn in the property market from the time of any 2022 valuation to the date of sale.

[84] As accepted by the appellants, a mortgagee sale for a price less than a registered valuation does not of itself suggest a breach — the focus is on the process taken.[46] Here, the process followed was clearly comprehensive and robust, and we accept Mr Gollin's submission that ultimately the market itself dictated the true value of the property. The 2022 valuation ceased to be of any real significance once the property had been marketed and various offers received. Those offers were the best evidence of the "best price reasonably obtainable" during the relevant period.[47] Goodmore was not required to wait to sell the property until the market rebounded.[48]

[85] Market feedback gathered by Barfoot & Thompson during the marketing period provides further strong support for the conclusion that the eventual sale price

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46 *Moritzson Properties Ltd v McLachlan*, above n 40, at [61].
47 *Ibanez Ltd v Westpac New Zealand Ltd*, above n 33, at [85(i)].
48 *Liddle v Bank of New Zealand* HC Auckland CIV-2009-404-6189, 29 October 2009 at [19], citing *Harts Contributory Mortgages Nominee Co Ltd v Bryers*, above n 33, at [43(e)].

of $2.15 million (inclusive of GST) represented the "best price reasonably obtainable". That feedback recorded various concerns including:

(a) The high cost of developing the site according to the expired resource consent, including the need for extensive infrastructure, roading, retaining, fencing, earthworks, and services, leading to the view that development was unviable in the short (and potentially medium) term.

(b) That the property was south-facing, steep, and only marginally suited to residential development, with potential geotechnical concerns due to a recent medium-sized slip.

(c) Likely high holding costs and the difficulty of funding development sites in the current, very tight, lending market.

[86] The reference to *Cuckmere Brick Co Ltd* and the subsequent criticism that the marketing failed to have sufficient regard to the two pre-sales agreements is also misconceived, given that the necessary subdivision consent had expired almost 12 months before the mortgagee sale, rendering the pre-sales agreements invalid.

[87] As for international marketing, there is no evidence to suggest that separate international marketing would have been appropriate or desirable for a property of this nature. As the Judge noted, there is no evidence that international buyers would not have been able to access the property details through the online advertising, or that they would have paid a higher price than that ultimately accepted by Goodmore.[49] In addition as Ms Jaques submitted, there were known impediments to overseas investment, including in the form of the Overseas Investment Act 2005.

[88] In conclusion, the evidence strongly supported the Judge's conclusion that it was not seriously arguable that Goodmore had breached its duty of reasonable care under s 176 of the PLA.

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[49] Judgment under appeal, above n 1, at [100(c)].

Should the Judge have exercised his discretion not to grant summary judgment?

[89] The appellants submitted that even if the Judge was satisfied that the test for summary judgment was met, he should have exercised his discretion not to grant summary judgment because Ms Chen was self-represented in the High Court and has English as a second language. DevCo was not separately represented. Mr Tingey submitted that the significance of these matters is that the appellants' case was not appropriately presented to the High Court and so meritorious defences were not properly articulated.

[90] The short answer to this submission is that the appellants were represented by experienced and able counsel on appeal. If necessary, an application to adduce further evidence on appeal could have been made, but was not. No potentially meritorious defences have been identified on appeal that would justify setting aside the order for summary judgment.

[91] We also note that Ms Chen is no stranger to litigation and has been "embroiled in substantial litigation with financiers" for some time.[50] Ms Jaques observed that she has been extensively involved in proceedings for many years, including through her ex-partner, Mr Lau.[51] Her practice of not engaging legal advice, or arranging appropriate interpretation services, appears to be longstanding. For example, Associate Judge Sussock stated in *Chen v Auckland Weihao Investment Ltd*:[52]

> … the plaintiff has now had many opportunities to take advice and use interpreters as required. Her decision to represent herself particularly when she appears to have considerable language difficulties cannot continue to be relied on to justify the repeated filing of applications that are devoid of merit or to excuse non-attendance at hearings, disregard of court directions or failure to make use of the opportunities provided by the court to advance her applications. As counsel submits, this comes at a cost to the respondents and there needs to be a limit to the court's tolerance of this.

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50 *Chen v Goodmore Investments (New Zealand) Ltd* [2024] NZHC 2655 at [2].

51 Citing, as examples: *Chen v Auckland Weihao Investments Ltd* [2020] NZHC 2450, (2020) 21 NZCPR 409; *Chen v Auckland Weihao Investment Ltd* [2021] NZHC 156, (2021) 21 NZCPR 826; *Chen v Auckland Weihao Investment Ltd* [2021] NZHC 2247; *Chen v Auckland Weihao Investment Ltd* [2021] NZHC 306; *Chen v Auckland Weihao Investment Ltd* [2021] NZHC 2271; *Chen v Auckland Weihao Investment Ltd* [2021] NZCA 657; *Chen v Auckland Weihao Investment Ltd* [2022] NZSC 24; *Chen v General Finance Ltd* [2023] NZHC 1329; *Chen v General Finance Ltd* [2023] NZHC 1758; *Chen v Tawa Trade Finance Ltd* [2023] NZHC 1333; *Chen v Tawa Trade Finance Ltd* [2023] NZHC 1801; *Chen v Tawa Trade Finance Ltd* [2023] NZHC 2156; and *General Finance Ltd v Lau* [2023] NZHC 3417.

52 *Chen v Auckland Weihao Investment Ltd* [2023] NZHC 3134 at [123].

[92] Ms Chen's failure to obtain legal advice and representation at the summary judgment hearing does not provide her with a separate avenue for overturning the substantive decision.

[93] We also note that the corporate appellants appear to have chosen not to obtain legal representation despite Goodmore and the Court making it clear[53] that Ms Chen could not appear on their behalf given the rule in *Re G J Mannix Ltd*.[54]

Limitation issues

[94] For completeness, we note that Goodmore did not rely on any limitation issues on appeal. Rather, it appeared to be common ground that although Ms Chen and DevCo's own claim seeking to reopen the Loan Agreement was commenced outside the one-year timeframe in s 125 of the CCCFA,[55] that time bar does not apply where oppression is used as a shield.[56] Goodmore accepted that there is existing appellate authority to this effect and accordingly addressed the oppression claim on its merits.

Costs

[95] This Court may award costs on an indemnity basis, where a contract so provides.[57] Pursuant to cl 16.1.4 of the Loan Agreement, and cl 10.1.2 of the Cross Guarantee, Goodmore is entitled to costs and disbursements as against the appellants on an indemnity basis, limited to the costs and disbursements (including legal fees) actually and reasonably incurred by Goodmore.[58]

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53 Judgment of Venning J, above n 2, at [18]; and judgment under appeal, above n 1, at [37] and n 12.
54 *Re G J Mannix Ltd* [1984] 1 NZLR 309 (CA).
55 Being one year from the due date for performance of the last obligation required to be performed under the loan agreement — payment of the full amount owing at the expiry date of 21 January 2022: Credit Contracts and Consumer Finance Act, s 125(3).
56 *Watherston v PGW Rural Capital Ltd* [2020] NZCA 329, [2020] NZCCLR 25 at [64]. Section 120 of the Credit Contracts and Consumer Finance Act grants the Court power to reopen an oppressive credit contract at any time.
57 Court of Appeal Civil Rules 2005, r 53E(3)(e).
58 Rule 53E(1)(b); and *Black v ASB Bank Ltd* [2012] NZCA 384.

[96] Counsel are encouraged to use their best endeavours to agree such costs. If costs cannot be agreed:

(a) Goodmore is to submit a memorandum as to costs (not to exceed five pages) within 20 working days of the date of this judgment.

(b) The appellants are to file any reply to Goodmore's memorandum as to costs (not to exceed five pages) within 10 working days of receipt of counsel for Goodmore's memorandum.

(c) Reasonable quantum will be fixed by the Registrar.

Result

[97] The appeal is dismissed.

[98] The appellants must pay the respondent costs and disbursements on an indemnity basis. Reasonable quantum to be fixed by the Registrar in the event that counsel do not agree.

Solicitors:
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