Solicitors:
Plaintiff: Shields Heritage
Second Defendant: In Person

Judgment Number: [2009] TASSC 87
Number of paragraphs: 7

Serial No 87/2009

File No 849/2008

GUNNS FINANCE PTY LTD (ACN 091 861 700) v ANTHONY CARNEGIE and NANCY KARIN KEEP

REASONS FOR JUDGMENT Holt AsJ

25 September 2009

1 The plaintiff, **Gunns** Finance Pty Ltd, has applied for summary judgment against the second defendant.

2 The statement of claim is as follows. By an agreement in writing made 30 June 2007, **Gunns** agreed to lend to the defendants $4,010,348.35 at an interest rate of 10.5 per cent per annum. The loan was repayable by monthly instalments of $44,330.35 commencing 31 July 2007. It was a term that if any instalment was missed, the loan balance would become due for repayment without demand and would carry interest at 12.5 per cent per annum. The funds were advanced on 1 July 2007. The defendants failed to pay the instalment due on 31 December 2007. The balance of the loan on that date was $3,999,784.77. The claim is for payment of the balance principal and the interest.

3 The procedure is set out in the *Supreme Court Rules 2000*, rr356 – 359. An application for summary judgment can only be made after the defendant has entered an appearance and the plaintiff has served a statement of claim, r356. The application must be supported by an affidavit verifying the facts upon which the claim, the subject of the application, is based and stating that in the deponent's belief there is no defence, r357. If the statement of claim fails to disclose a cause of action, or the required affidavit is not provided, the application must be dismissed; *Triffit v Dare and Anor* Tas U/R A91/1992. Judgment is to be given on the claim unless the application is dismissed, or the defendant satisfies the Court that there ought to be a trial, r358. Where the defendant satisfies the Court that there ought to be a trial there is no discretion, the defendant must be given leave to defend, either unconditionally or on terms, r359.

4 The application was personally served on the second defendant. She did not appear at the hearing. Accordingly, if **Gunns** has brought itself within the Rules, it is entitled to judgment on the claim.

5 The affidavit in support of the application has exhibited with it a copy of the loan contract. It purports to have been signed by **Gunns** and the defendants. It states that the amount of the loan was $4,003,340.00. It indicates that stamp duty of $7,008.35 was paid. This produces the total of $4,010,348.35 referred to in the statement of claim. By clause 13 of the agreement the stamp duty was to be reimbursed by the defendant to **Gunns** on demand. There is exhibited to the affidavit a copy letter from **Gunns** to the defendants dated 30 June 1997 confirming approval of the loan with the stamp duty rolled into the principal so that the letter shows the total borrowing to be $4,010,348.35. The agreement specifies that the amount of each monthly repayment will be $44,330.35. The affidavit states that monthly instalments in that amount were paid on the last day of