



Supreme Court
New South Wales

Case Name:	Commonwealth Bank of Australia v Watts
Medium Neutral Citation:	[2022] NSWSC 1291
Hearing Date(s):	26 September 2022
Date of Orders:	26 September 2022
Decision Date:	26 September 2022
Jurisdiction:	Common Law
Before:	Davies J
Decision:	Judgment for the plaintiff for possession of the whole of the land in Lot 54 on Strata Plan 62071 being Volume 2805 Folio 754 situated at and known as Unit 54, 189 Swansea Street East (also known as 189 Swansea Street) East Victoria Park in the state of Western Australia.
Catchwords:	LAND LAW – possession of land – default under loan agreement and mortgage – where agreement reached after proceedings commenced for consent judgment to be held in escrow on conditions – where defendant breached conditions – plaintiff entitled to judgment for possession
Legislation Cited:	Nil
Cases Cited:	Nil
Texts Cited:	Nil
Category:	Principal judgment
Parties:	Commonwealth Bank of Australia (Plaintiff) James Raymond John Watts (Defendant)
Representation:	Counsel:

J Dimeo (Plaintiff)
No appearance (Defendant)

Solicitors:
Dentons Australia (Plaintiff)
Self-represented (Defendant)

File Number(s): 2021/269483

Publication Restriction: Nil

JUDGMENT

- 1 The plaintiff commenced these proceedings seeking possession of land being unit 54/189 Swansea Street, East Victoria Park in Western Australia on 21 September 2021. The basis for the order for possession was a breach of a loan agreement dated 21 January 2013 and a mortgage which provided security for the loan agreement. Under the loan agreement an amount of \$463,936 was lent to the defendant.
- 2 A defence was filed by the defendant acting for himself on 30 March 2022. The document filed did not disclose a defence to the claim.
- 3 The parties entered into negotiations, and on 17 June 2022 the defendant signed a consent judgment giving possession of the land on an arrangement whereby that judgment would be held in escrow on a number of conditions as follows: first, the defendant was to make payments to the plaintiff of \$4,000 per month on or before the first day of each month commencing on 1 July 2022; secondly, the defendant was to provide to the plaintiff by 1 September 2022 a complete statement of his financial position with supporting documents evidencing his ability to resolve the arrears within a reasonable period and to maintain scheduled repayments; thirdly to make no further defaults under the loan agreement or mortgage. If that was done, the plaintiff would then review the defendant's circumstances. If those conditions were not complied with, the plaintiff would proceed with enforcement of its claim.
- 4 Although a payment was made on 1 July 2022, no such payment was made on or before 1 August 2022. Some payments were subsequently made but again no payment of \$4,000 was made on or before 1 September 2022. The

statement of financial position was not provided. The plaintiff gave the defendant a further opportunity to do so by 15 September 2022 but no such financial statement has been provided.

- 5 The plaintiff now seeks judgment for possession in accordance with the consent judgment. The defendant has not appeared this morning. I am satisfied from emails sent to the defendant that he was given notice of the hearing and of the intention of the plaintiff to seek entry of judgment.
- 6 I am satisfied in all the circumstances that the defendant has, by his failure to pay the amounts of \$4,000 in August and September 2022 and by his failure to provide a statement of his financial circumstances, breached the arrangement that he entered into on 17 June 2022. I am satisfied that the Notice to Occupier has been duly served. In those circumstances the plaintiff is entitled to entry of the consent judgment for possession.
- 7 Accordingly, I make this order:
 1. Judgment for the plaintiff for possession of the whole of the land in lot 54 strata plan 62071 being volume 2805 folio 754 situated at known as 54/189 Swansea Street East, East Victoria Park in the State of Western Australia.

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