Farm Debt Mediation Act update

Lisa Dorman | June 2013 | Banking

TurkAlert

The NSW Supreme Court has rejected the contention that settlement terms entered into between a farmer and a lender during the course of litigation, constituted a new loan agreement which was required to be mediated under the *Farm Debt Mediation Act NSW 1994* (the 'Act') (*Hargraves Secured Investments Limited v Sharpe*).[1]

The farmer in the proceedings had obtained a stay of execution of a writ for possession until the Court determined the application on a final basis. A summary of the earlier decision before McCallum J. can be found in a TurkAlert published on 26 March 2013. To view this TurkAlert, click here.

Harrison J found the deed of settlement entered into between the parties, following the commencement of proceedings and earlier mediation under the Act, did not create a new or successive loan agreement or 'fresh' farm debt.[2]

The settlement deed related to the same loan agreement previously mediated and was the subject of a section 11 Certificate that had been issued by the Rural Assistance Authority. An adjustment to the interest provisions of the loan, which were contained in the settlement deed, was held not to be indicative of the creation or existence of a new or fresh loan agreement. In His Honour's words:

> To conclude otherwise would be wholly to constrain and to frustrate the parties' ability to affect an audit and mutually acceptable regime for the termination of their moribund contractual relationship when the requirements of the Act had been strictly observed.[3]

The application made by the farmer to set aside the judgment for possession was dismissed.

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[1] [2013] NSWSC 539
[2] See paragraph 14
[3] At paragraph 18