

Mortgagors Relief Act 1931

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An Act to confer Jurisdiction to grant Relief to Mortgagors in certain Cases.

Preamble.

WHEREAS on account of the special economic conditions at present prevailing it is desirable to confer jurisdiction to postpone the exercise of powers of sale by mortgagees under existing mortgages in certain cases:

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1 Short Title.

- (1) This Act may be cited as the Mortgagors Relief Act, 1931.

Commencement and duration.

- (2) This Act shall be deemed to have come into force on the eighteenth day of March, nineteen hundred and thirty-one, and shall continue in force until a date to be appointed for the ceasing of the operation thereof by Proclamation, or until the thirty-first day of December, nineteen hundred and thirty-two, whichever date is the earlier.

Provision for repeal.

- (3) On the date so appointed or fixed under the last preceding subsection for the ceasing of the operation thereof this Act shall be deemed to have been repealed.

Savings.

- (4) Notwithstanding such repeal, all proceedings pending under this Act at the date of such repeal may be continued and completed as if this Act were still in force, and all orders under this Act theretofore made and then subsisting, or thereafter made in any such pending proceedings, shall enure as if this Act were still in force, and all proceedings may be taken and all jurisdiction exercised with respect to such orders accordingly:

Provided that after such repeal no such order shall be extended under subsection two of section eight hereof.

2 Interpretation.

In this Act, unless inconsistent with the context,—

“Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively; and includes any instrument of security granted over or in respect of any policy for securing a life insurance, endowment, or annuity; and also includes any agreement for the sale and purchase of land:

For the purposes of this Act an agreement for sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon and fulfilment of the conditions set forth in the agreement:

“Mortgagor” means a person liable under the provisions of a mortgage, and includes any person who has guaranteed the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument, and also includes any person against whom a mortgagor has a legal or equitable right of indemnity in respect of any liabilities under the mortgage:

“Mortgagee” means the person entitled to the benefit of the security of the mortgage.

3 Application of Act.

This Act shall apply to all mortgages except—

- (a) Securities for loans granted under the Repatriation Act, 1918:
- (b) Mortgages executed after the commencement of this Act:
- (c) Any other mortgages or class or classes of mortgages from time to time exempted from the operation of this Act by the Governor-General by Order in Council gazetted in that behalf.

4 Limitation of rights of mortgagees.

- (1) It shall not be lawful for a mortgagee under a mortgage to which this Act applies or any other person—

- (a) To exercise (except in respect of property which the mortgagor has abandoned) any power of sale, rescission, or entry into possession conferred by any such mortgage or by statute; or
- (b) To issue or to be concerned in the issue of any process of execution in pursuance of any judgment, decree, or order of any Court in its civil jurisdiction obtained against the mortgagor in respect of any covenant, condition, or agreement expressed or implied in the mortgage, whether so obtained before or after the commencement of this Act, or to continue or to be concerned in the continuance of any such process of execution, whether commenced before or after the commencement of this Act; or
- (c) To file a bankruptcy petition against the mortgagor in respect of any debt arising out of any covenant, condition, or agreement expressed or implied in the mortgage—

otherwise than subject to and in accordance with the provisions of this Act.

- (2) For the purposes of this Act the exercise of a power of sale shall be deemed to be completed when the vendor becomes bound by an agreement or contract of sale, and the onus of proving that any property has been abandoned by a mortgagor shall rest upon the mortgagee.

5 Procedure to be adopted by mortgagee before proceeding to exercise certain powers.

- (1) A mortgagee before proceeding to do any such act or exercise any such power as is defined in the last preceding section shall give to the mortgagor notice in writing of his intention to do such act or exercise such power.
- (2) Such notice shall contain an address for service, and shall be signed by the mortgagee or by some duly authorized attorney or agent of the mortgagee, and shall be deemed to be duly given if delivered to the mortgagor personally, or if posted by registered letter addressed to the mortgagor at his last known place of abode in New Zealand. A notice so posted shall be deemed to have been given at the time when the registered letter would in the ordinary course be delivered.
- (3) If the mortgagor does not within one calendar month after the giving of any such notice of intention to exercise any power or issue any process of execution in respect of land, or to file a bankruptcy petition, or within seven days after the giving of any such notice of intention to exercise any power or issue any process of execution in respect of chattels, make an application to the Supreme Court for relief as hereinafter provided, and serve a copy of such application on the mortgagee, the mortgagee may on the expiration of the said calendar month or seven days, as the case may be, proceed to do such act or exercise such power as aforesaid.
- (4) If the mortgagor makes such application and serves a copy thereof in accordance with the last preceding subsection, the mortgagee shall not do such act or exercise such power until such application has been disposed of by the Supreme Court, or otherwise than subject to and in accordance with any order made by the Supreme Court as hereinafter provided.

6 Application by mortgagor to Supreme Court for relief.

A mortgagor shall in making such application to the Supreme Court for relief state therein the date on which such notice as aforesaid was given by the mortgagee, and shall also set forth therein the specific grounds for such relief.

7 Matters to be considered by Supreme Court on application by mortgagor.

In determining whether relief against the doing of any act or the exercise of any power as aforesaid by the mortgagee shall be granted to the mortgagor, the Supreme Court may take into consideration—

- (a) The effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee:
- (b) The inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest:
- (c) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage:

- (d) Any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof:
- (e) The extent to which any default by the mortgagor has been caused by any economic or financial conditions affecting trade or industry in New Zealand:
- (f) Whether any relief granted by the Court pursuant to this Act would be reasonably likely to enable the mortgagor, having regard to his circumstances and the conditions mentioned in the last preceding paragraph, to meet his liabilities under the mortgage within such time as the Court deems reasonable.

8 Nature of relief that may be granted by Court.

- (1) If, having regard to the considerations mentioned in the last preceding section and to all other relevant considerations, the Court is of opinion that relief should be granted to the mortgagor, it may, in its discretion, subject to such terms and conditions as it thinks fit to impose, order that the mortgagee shall not, before a date specified in such order (being not later than twelve months after the date of the mortgagor's application for relief), do any act or exercise any power mentioned in section four hereof, save by leave of the Supreme Court upon application by the mortgagee in that behalf, on account of a breach by the mortgagor of any such terms and conditions as aforesaid.
- (2) At any time before the date specified as aforesaid the Supreme Court may, on the application of the mortgagor, extend the order to a date not later than twelve months after such specified date. In granting any such extension, the Court may impose such terms and conditions, and make such variations in the terms and conditions of the original order, as it thinks fit.

9 Special provisions as to cases where powers have been exercised between the commencement and the passing of this Act.

- (1) Where, with respect to any mortgage to which this Act applies, the exercise of any power or the doing of any act defined in paragraph (a) or in paragraph (b) of section four hereof has been completed (whenever commenced) after the commencement of this Act but before the passing thereof, the mortgagor may apply to the Supreme Court for an order setting aside the exercise of such power or the doing of such act, reinstating all parties as nearly as may be in their former positions, and granting relief to the mortgagor as provided in section eight hereof as if the exercise of such power or the doing of such act had not been completed.
- (2) If the Court, having regard to the considerations mentioned in section seven hereof and to all other relevant considerations, is of opinion that such relief should be granted to the mortgagor, it may, in its discretion, subject to such terms and conditions as it thinks fit to impose, and notwithstanding that rights may have been acquired by any person other than the mortgagee, make any

such order as aforesaid, or any particular order which may be required to enable such relief to be granted:

Provided that no order shall be made under this section in any case where the property in respect of which such power has been exercised or such act has been done has been sold at the time of or after the exercise of such power or the doing of such act to a person other than the mortgagee and such sale has been completed by the payment of the purchase-money and the delivery of the property and the documents of title (if any) before the passing of this Act.

- (3) The provisions of subsection two of section eight hereof shall apply with respect to any order made under this section in so far as such order grants relief as provided in the said section eight.
- (4) No application to the Supreme Court under this section shall be heard by the Court unless the application is made within one month after the passing of this Act.
- (5) Subject to the provisions of any order that may be made under this section, the exercise of any such power or the doing of any such act as aforesaid which has been completed before the passing of this Act shall not by reason of anything in this Act be deemed to have been unlawfully so completed.

10 Procedure.

- (1) Any application to the Supreme Court under this Act may be made by motion, supported by affidavit, with notice to such persons as the Court considers entitled thereto. Every such application shall be made and heard in the Supreme Court office nearest to the place where the land or other property to which the application relates is situated:

Provided that during the absence of a Judge, or during the inability of a Judge to act from any cause whatever, the Registrar of the Court shall have authority and jurisdiction to order that any such application be heard at some other place.

- (2) The mortgagor making the application shall use due diligence in effecting the required services, and if he fails so to do the mortgagee may move to dismiss the application, and the Court may on that ground dismiss the application accordingly.
- (3) Any application under this Act may be made to and disposed of by a Judge in Chambers.
- (4) There shall be no appeal from any order under this Act.

11 Power to apply Act to leases containing a purchasing clause.

- (1) The Governor-General may from time to time, by Order in Council gazetted, apply the provisions of this Act, with the necessary modifications, to leases of land containing an optional or compulsory purchasing clause granted before the commencement of this Act, or to any such lease or leases or to any class or classes thereof.

- (2) For the purposes of this Act, every such lease to which this Act applies shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal moneys secured. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

12 Jurisdiction of Supreme Court with respect to matters arising under this Act.

In order that full effect may be given to the intent of this Act, the Supreme Court shall, in every matter arising in respect of a mortgage, or of a lease containing a purchasing clause, to which this Act applies, have full power and jurisdiction to deal with and determine such matter in such manner, and to make such order, not inconsistent with the provisions of this Act, as it deems just and equitable under the circumstances of the case, notwithstanding that express provision in respect of such matter is not contained herein.

13 Act to apply to Crown.

All the provisions of this Act shall apply to the Crown.

14 Jurisdiction under this Act conferred on Magistrates in respect of mortgages where the principal moneys do not exceed £2,000.

- (1) Where the principal moneys remaining due and unpaid under the provisions of any mortgage do not exceed two thousand pounds, a Magistrate shall have in respect of such mortgage, and the doing of any act or the exercise of any power by the mortgagee, the same jurisdiction, powers, and discretions as are by this Act conferred upon the Supreme Court.
- (2) In the case of any such mortgage, unless inconsistent with the context, all the provisions of this Act shall apply and be read and interpreted as if the words “a Magistrate” were substituted for the words “the Supreme Court”, and the words “the Magistrate” for the words “the Court”.
- (3) No appeal shall lie to the Supreme Court from an order of a Magistrate under this Act.

15 Regulations.

The Governor-General may from time to time, by Order in Council, make regulations for giving full effect to the provisions of this Act and for the due administration thereof.