

When is a fish hatchery not a farm?



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THE NSW COURT OF Appeal, in *Craigie v Champion Mortgage Services Pty Ltd*,¹ provides further confirmation of what constitutes a farm debt for the purposes of the *Farm Debt Mediation Act 1994* (effective 24 November 2005). It held that a fish hatchery which grows fish for pet shops is not a farm for the purposes of the Act but left open the question of whether a fish hatchery which grows fish for human consumption is a farm.

In *Lawloan Mortgages Pty Ltd v Hancock*² Bergin J had determined that a company engaged in running a riding school fell outside the definition of “farming operations”.

In *Liberty Funding Pty Ltd v Ivosevich*³ Simpson J considered a case where the borrower operated a small market garden while also engaging in other occupations including computer consultant, finance broker, property developer, mercantile agent, cleaner and private investigator.

In the loan application form the borrower described himself as a “computer programmer” with a second job as a “computer specialist”.

The borrower, however, gave evidence that his other jobs occupied only two to three days per week, and often only at night, while the balance of his time was occupied in attending to horticultural matters. This evidence was accepted as the mortgagee did not lead any significant evidence to the contrary and did not cross-examine the borrower. The result was that the Act was found to apply, the mortgagee’s judgement was set aside, the writ of possession was stayed, and the mortgagee was ordered to pay the mortgagor’s costs of the proceedings.

On 13 February 2007 the Court of Appeal in *Craigie & Anor v Champion Mortgage Services Pty Ltd*⁴ upheld a finding by Johnson J that a fish hatchery which raised fish for pet shops was not a farm for the purposes of the Act.

In a unanimous decision Hodgson JA cited with approval the trial judge’s reasoning that: “In my view ... ‘farming operations’ covered by the FDM Act ought to be confined to traditional agricultural pursuits extended only so far as the Act provides”.

However, Hodgson JA went on to leave open the possibility that the Act might include fish raised for human consumption: “In my opinion, insofar as the primary judge concluded that a fish hatchery operation for the purpose of supplying fish for pet shops and aquariums is not in the meaning of farming operation within the Act, his conclusion was correct. There

may be more difficult questions in determining whether operations of the nature of raising fish for the purpose of human consumption fall within that meaning.”

The Court of Appeal also held the trial judge did not err in having regard to US legislation and case law.

ENDNOTES

1. [2007] NSWCA 15.
2. [2001] NSWSC 4105.
3. [2002] NSWSC714.
4. [2007] NSWCA 15.

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