

AUSTRALIA / JUDGMENT

Hodder v Wilkinson

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Supreme Court

New South Wales

Medium Neutral Citation:

Hodder v Wilkinson [2026] NSWSC 734

Hearing dates:

24 September 2026

Date of orders:

24 September 2026

Decision date:

24 September 2026

Jurisdiction:

Common Law

Before:

Emmett J

Decision:

- (1) Judgment for the plaintiffs against the second defendant and third defendant in the sum of \$290,000.
- (2) The second and third defendants are to pay simple interest at the rate of 22% per annum on the sum of \$300,000 from 8 November 2022 to 31 March 2025 and simple interest on \$290,000 at 22% per annum from 1 April 2025 to the date of judgment.
- (3) An order pursuant to s 101 of the Civil Procedure Act 2005 (NSW) that post-judgment interest shall run against the second and third defendants on \$290,000 at the rate of 22% per annum.
- (4) The second third defendants are to pay the plaintiffs' costs as agreed or assessed on an indemnity basis.

Catchwords:

CIVIL PROCEDURE — Default judgment — Default in filing defence — where first defendant has not filed defence — whether first defendant has adequate notice of proceedings and hearing — whether fair to permit plaintiff to seek judgment without further opportunity to first defendant to be heard

JUDGMENTS AND ORDERS — where second and third defendants entered into loan agreement including to pay interest on specified terms — no issue of principle — judgment for first and second plaintiffs against second and third defendant

Category:

Principal judgment

Parties:

Marie Hodder (First Plaintiff)

Brian Hodder (Second Plaintiff)

Peta Wilkinson (First Defendant) (No Appearance)

Sean Lewis (Second Defendant) (No Appearance)

Better Lifestyle Services Pty Ltd (Third Defendant) (No Appearance)

Representation:

Counsel:

J Young (Plaintiffs)

Solicitors:

Bardarne Lawyers (Plaintiffs)

File Number(s):

2026/00017699

Publication restriction:

Nil

JUDGMENT – EX TEMPORE (REVISED)

Claim against the first defendant

The plaintiffs sue the defendants on a loan agreement signed electronically and dated 8 November 2022. By the loan agreement the plaintiffs lent \$300,000 to the third defendant, a company. The agreed interest rate was 22% per annum, save that the loan agreement provided that the plaintiffs would accept interest at a lower rate of 18% per annum if there was no default. The loan was to be repaid by 8 November 2024.

The first and second defendants (Ms Wilkinson and Mr Lewis) were guarantors. At the time, Mr Lewis was a director of the third defendant, but Ms Wilkinson was not. (She became a director of the third defendant on 1 December 2023.)

Ms Wilkinson gave a second mortgage over property owned by her in East Braxton, New South Wales. The first mortgage over the property is to Permanent Custodians, who was the fourth defendant but was removed as a defendant when the plaintiffs' amended statement of claim was filed.

Following default notices, on 6 November 2025, Mr Lewis sent an email to the plaintiffs' solicitor, Mr Badarne. An email address for Ms Wilkinson was copied, but it is an email address that appears to be associated with one of Mr Lewis' businesses (the address ends "@lewisproperties.com.au"). In that email, Mr Lewis said they had financial difficulties which were impacting their property developments. He said, "[w]e remain fully committed to repaying the debt". There is no evidence of Ms Wilkinson seeking to distance herself from this communication, but nor is there any evidence from which I can confidently infer that the email was sent on her behalf or with her instructions.

Mr Lewis also referred to possible challenges to what he described as "excessive default interest" and to equitable relief options. The evidence does not disclose what equitable relief options were being considered.

The plaintiffs filed their statement of claim on 14 January 2026. Neither Ms Wilkinson nor Mr Lewis were personally served. Mr Lewis sent a letter to the plaintiffs' solicitors on 18 February 2026. Unlike the letter of 6 November 2025, this letter is framed in the first person singular, and does not purport to speak for Ms Wilkinson. In that letter, Mr Lewis took a point about the interest calculation, contending that the plaintiffs had effectively sought to claim interest upon interest when that was not permitted under the contract (a matter to which I return). In the penultimate paragraph, Mr Lewis said, "I acknowledge that monies are owing under the Loan Agreement and I do not seek to avoid my obligations. However, I am not prepared to accept a claim that misrepresents the contractual entitlement of the Plaintiffs." This may have been an admission by Mr Lewis but it was not an admission by, nor did it purport to be an admission on behalf of, Ms Wilkinson.

Two days earlier on 16 February 2026, Mr Lewis had sent an email to the Court in which, among other things, he said two things:

Ms Wilkinson was currently medically incapacitated and was not mentally fit to manage her legal affairs or participate in the proceedings. Mr Lewis said he was obtaining formal medical evidence.

Mr Lewis said that he and Ms Wilkinson both lived at the East Branxton property (ie, no longer at the address in Ashtonfield, New South Wales stated in the contract in November 2022).

Mr Lewis filed a defence in his own name on 27 March 2026, from which it may be inferred that he received the statement of claim. Ms Wilkinson never filed a defence or otherwise appeared. Mr Lewis' defence in large part put the plaintiff to strict proof, including specifically in relation to interest.

The plaintiffs filed an amended statement of claim on 13 April 2026. This pleading recognised the point taken by Mr Lewis about interest. The plaintiffs now claim judgment for the principal loan amount (\$300,000) plus simple interest at 22% per annum.

Mr Lewis appeared before the Court at a number of directions hearings and said that Ms Wilkinson lacked capacity. As I explain below, Ms Wilkinson's direct communications more recently do not indicate that she lacked capacity, but they do indicate that she may not understand the status of these proceedings.

No order was made or sought permitting Mr Lewis to represent Ms Wilkinson or act on her behalf. The plaintiffs knew at all times that they had not served Ms Wilkinson personally. Until 8 September 2026, the only email address used by the plaintiffs for Ms Wilkinson was the @lewisproperties address. As I will explain shortly, the Court knows now that Mr Lewis and Ms Wilkinson have separated. While this is the email address given in the contract in November 2022, the information presently before the Court means the Court cannot conclude that Ms Wilkinson still receives emails to this address or received them earlier this year. Further, despite having been explicitly informed that Ms Wilkinson resided at the East Branxton address, the plaintiffs continued to send written communications to Ms Wilkinson at the Ashtonfield address. There is no basis on which the Court can infer that she received this correspondence.

Ms Wilkinson on 8 September 2026 emailed to Mr Badarne two reports from her treating psychologist, dated 13 July 2026 and 21 August 2026. The email addressed used was a Gmail address, not the @lewisproperties address. There is no evidence of what prompted Ms Wilkinson to send these reports.

The reports record a history of anxiety, depression and PTSD. They record that Ms Wilkinson's symptoms are currently compounded by severe financial pressures arising from the actions of her ex-partner (who I infer is Mr Lewis). The psychologist said that as a result Ms Wilkinson was facing homelessness.

If Mr Lewis had left Ms Wilkinson or was planning to leave her, it was in his interests that the plaintiffs enforce their claim against Ms Wilkinson's property rather than (or before) seeking to enforce a judgment against Mr Lewis personally. This means that, not only did Mr Lewis have no permission or authority to represent Ms Wilkinson in these proceedings, but it appears he may have been in a position of significant conflict such that he could not be an appropriate person to represent Ms Wilkinson in these proceedings.

The evidence on which the plaintiff relies to establish that Ms Wilkinson received the amended statement of claim is evidence of a conversation, subsequently confirmed by email, which Mr Bardarne had with Ms Wilkinson on 9 September 2026.

According to Mr Bardarne, the conversation on 9 September 2026 was as follows:

BARDARNE: Hello Ms Wilkinson, my name is Badame. I am the solicitor for the Hodders in relation to the legal proceedings concerning the loan that your company took from them. As you know, the matter is listed for hearing at the Supreme Court on 24 September 2026 and you have not done anything in relation to the Amended Statement of Claim.

WILKINSON: Sean [Mr Lewis] told me that he would be taking care of the Court matter. But now, he has left me. He has caused me stress and anxiety.

BARDARNE: Did he give you a copy of the Amended Statement of Claim?

WILKINSON: Yes, he did. Also, I received the Amended Statement of Claim from you by email on 13 April 2026.

BARDARNE: What do you intend to do with these Supreme Court proceedings against you?

WILKINSON: I have listed the property for sale and I expect to receive an offer in the next 2-3 weeks.

On the same day, Mr Badarne emailed Ms Wilkinson (using her Gmail account) in the following terms:

Thank you for calling me today.

I summarise our conversation as follows:

1. When you received the sealed Amended Statement of Claim on 13 April 2026 (in proceedings 2026/00017699), Mr Sean Lewis told you to leave it to him and that he would take care of it. You relied on Mr Lewis to "take care" of these legal proceedings.
2. You have now listed the subject property for sale. There have been 2 open house inspections. You expect to receive an offer within 2-3 weeks. You are confident that the property will sell in the near future.
3. Mr Sean Lewis has now left you and has caused you stress and anxiety.

I would be grateful if you would confirm the above by return of email.

Ms Wilkinson replied to the email as follows:

Thank you for reaching out to me today after you received my medical certificates from my [psych]ologist.

Yes Sean agreed to take care of the Statement of Claim as you have outlined. He contacted me to supply the first medical certificate for the court.

I hold the deeds to this property and due to Seans leaving me to work through everything else I have had to place the house on the market and I believe i[t] will be sold in the near future as I mentioned to you today.

Somewhat surprisingly, there is no evidence of Mr Badarne informing Ms Wilkinson that she should not rely on Mr Lewis, or that Mr Lewis could not represent her in these proceedings. The email is not apt to convey that the matter will proceed against her on 24 September 2026 on the basis that the plaintiff contends the claim is undefended against Ms Wilkinson.

No attempt was made in the conversation on 9 September 2026, nor in the follow-up email, to communicate that if Ms Wilkinson wished to contest anything that the Court might do, she needed to appear on 24 September 2026.

Ms Wilkinson, in her email of 8 September 2026, said that she would be going to her GP on 1 October 2026, and that she would ask her GP to write an update as well. This is not indicative of an understanding that the hearing on 24 September 2026 is proposed to be for final hearing. It also raises the possibility that the mental health matters raised by her psychologist may not be the only relevant health matters.

There is no evidence that Ms Wilkinson has had the benefit of legal advice. While the Loan Agreement, which she apparently signed electronically on 8 November 2022, included a warranty that she had sought such legal and financial advice as she considered necessary, there is no evidence that she actually obtained such advice. The plaintiffs as lenders did not obtain any sort of certificate or letter confirming the provision of independent legal advice.

On the evidence, at least since these proceedings were commenced, Ms Wilkinson has relied on Mr Lewis and appears to have believed he was able to represent her in the proceedings. The evidence suggests that Mr Lewis may have been acting in a position of material conflict although I stress that I cannot and do not make any concluded finding about that. As I have indicated, the plaintiffs' solicitor did not take any steps to correct any mistaken belief that Ms Wilkinson may have had.

I am satisfied it would not be fair to Ms Wilkinson to allow the plaintiffs to proceed against her today. The plaintiffs have sought that the matter against the first defendant be adjourned to a later date. I propose to take that course. At an appropriate occasion, I will hear the plaintiffs on the question of costs of the hearing today against Ms Wilkinson, which may be informed by the circumstances that led up to the hearing today and by the plaintiffs' role in the necessity for multiple final hearings.

Claim against the second and third defendants

Although Mr Lewis was not served personally, there is no question that he had adequate notice of the proceedings and took steps in his own interest to defend them (at the same time acknowledging his own obligation to repay at least the principal). On the evidence before me, the corporate third defendant was served at its registered address.

The plaintiffs' evidence establishes that they lent at least the second and third defendants \$300,000. I stress that I say nothing one way or the other about the first defendant as matters presently stand. This principal was repayable on 8 November 2024 and interest accrued under the Loan Agreement at 22% per annum simple interest.

\$10,000 was paid on 31 March 2025. There is no pleading or evidence before me that the plaintiffs elected to allocate this payment to interest rather than principal, or that they communicated such an election to the defendants. In the absence of any such evidence, I would infer that the payment was a repayment of the first debt that arose between the parties, that is, the principal. Mr Lewis in his letter of 18 February 2026 indicated his belief that the payment of \$10,000 reduced the principal.

The plaintiff is entitled to interest on \$300,000 at 22% per annum from 8 November 2022 to 31 March 2025 and interest on \$290,000 at 22% per annum from 1 April 2025.

Accordingly, the orders I make as between the plaintiffs and the second and third defendants are:

Judgment for the plaintiffs against the second defendant and third defendant in the sum of \$290,000.

The second and third defendants are to pay simple interest at the rate of 22% per annum on the sum of \$300,000 from 8 November 2022 to 31 March 2025 and simple interest on \$290,000 at 22% per annum from 1 April 2025 to the date of judgment.

An order pursuant to s 101 of the Civil Procedure Act 2005 (NSW) that post-judgment interest shall run against the second and third defendants on \$290,000 at the rate of 22% per annum.

The second and third defendants are to pay the plaintiffs' costs as agreed or assessed on an indemnity basis.

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Decision last updated:

25 September 2026

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Prepared on 28 October 2026 · Esheria