

SUBMISSIONS OF DEFENDANT FIONA CAROLINE CRISTIAN
8th June 2007

COURT DETAILS

IN THE SUPREME COURT
OF NEW SOUTH WALES
SYDNEY REGISTRY

EQUITY DIVISION

FILE No. 003072 of 2007

TITLE OF PROCEEDINGS

Plaintiff : PERPETUAL LIMITED A.C.N 000 431 827

Defendant : FIONA CAROLINE CRISTIAN

SUBMISSIONS

1. The Defendant at the hearing of the Amended Summons filed by the Plaintiff on 7 June 2007 appears and she is represented by her husband with authority and submits that there are very serious issues relating to the alleged Loan and alleged Mortgage provided by the Plaintiff to the Defendant.
2. The Defendant submits that the Plaintiff must come to equity with clean hands and must show that the Application provided by Macquarie Mortgages on 28 March 2005, for the alleged Mortgage and Loan with the Plaintiff, had made full disclosure to the Defendant of all material facts in relation to the alleged Mortgage with the Plaintiff.
3. The Defendant submits that the fraud of the Plaintiff has affected the nature of the content of contractual rights which is alleged to have arisen against the Defendant, and that the Equity Division of the Supreme Court of New South Wales cannot assist the Plaintiff in depriving the Defendant of her rights, and that for the Court to assist the Plaintiff would amount to assisting the Plaintiff in the carrying out of a deception, fraud and breach of duty towards the Defendant and her family.
4. The Defendant submits that the orders made by the Supreme Court of Court of New South Wales on 15 November 2006, and by the New South Wales Court of Appeal on 2 April 2007, cannot make legal the fraudulent Mortgage said to give the Plaintiff the right to sell the property owned by the Defendant.
5. The Defendant submits that an examination of the Judgment of Justice HIDDEN discloses that his Honour was aware that there were grounds for the Defendant to complain about the alleged Mortgage. There was evidence before the Court to support the complaints of the Defendant and his Honour as the last paragraph of Page 1 of his Judgment stated as follows: *at*

"That has been supplemented today by further evidence on affidavit from the defendant herself and from the broker, Mr Hartley, all of which is consistent with the assertion that the loan contract signed was indeed not consistent with the loan that was sought. This may raise an issue as to whether the defendant has recourse against any other person or organization arising from the circumstances in which the loan document and the mortgage came to be signed, and there may indeed be an issue as to the amount said now to be outstanding under the contract."

6. The Defendant submits that his Honour continued and further stated:

"That said, in the circumstances, the plaintiff seeks summary judgment for possession of the property and also for judgment in the amount outstanding. As to that, however, Mr Golledge, who appears for the plaintiff, realistically acknowledged that there may be an issue about the amount and what is pressed this morning is summary judgment for possession of the property. That application is pressed upon the basis that nothing in the defence or cross claim filed by the defendant or, indeed any in any of the evidence upon which she relies raises any triable issue in opposition to possession."

7. The Defendant submits that his Honour Justice HIDDEN could not make orders which assisted the Plaintiff in depriving the Defendant of her rights and that the Judgment and Orders assisted the Plaintiff in the carrying out of a deception, fraud and breach of duty towards the Defendant and her family.

8. The Defendant submits that a further examination of the Judgement of HIDDEN J. discloses that his Honour, in the last paragraph of Page 2 stated as follows:

"That submission in my view is sound. The simple fact is that a loan contract was entered into for a certain amount of principle at certain interest rate. The mortgage was signed consistent with that loan contract and to secure repayment of the loan contract with interest."

9. The Defendant submits that his Honour's decision amounts to violations of the Defendants right to have the matters relating to the alleged mortgage investigated in Court as the Defendant would never have signed a mortgage that would deprive her and her Family of the property under a fraudulent mortgage. At no time was it disclosed to the Defendant that the Application for a loan with Macquarie Mortgages was, in reality, from the alleged Plaintiff of which the Defendant had no knowledge at the time of signing the application. The Defendant was induced into signing the loan documents by the false and fraudulent pretences of the Plaintiff and its servants and agents.

10. The Defendant submits that Justice HIDDEN, in the last paragraph of Page 2 states:

"It is common grounds that there has been default in that no payment has ever been made and, in those circumstances, the plaintiff is entitled to summary judgment for possession."

11. The Defendant submits that his Honour completely disregarded the Defendant's rights and has further deprived the Defendant of her rights, and that the Judgment and Orders assisted the Plaintiff in the carrying out of a deception, fraud and breach of duty towards the Defendant and her family.

12. The Defendant submits that on 15 November 2006, his Honour stated as follows:

"The defendant sought an opportunity for more time to research the circumstances of the loan and to research the relevant law in answer to the present motion. However, in light of the history of the matter, I am not prepared to allow any further adjournment. This motion has taken long enough as it is to be brought to hearing."

13. The Defendant submits that his Honours Judgment and Orders amount to violations to the Defendants civil rights as set out by the United Nations in Article 5 of the International covenant on Civil and Political Rights which provides as follows:

" 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than it is provided for in the present Covenant."

" 2. There shall be no restrictions upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, convention, regulations or custom on the pretext that the present Covenant does not recognize such rights or that that it recognizes them to a lesser extent."

14. The Defendant submits that Judgment and Orders of HIDDEN J made on 15 November, 2006, further seek to make legal an illegal act and amounts to violations of the United Nations Article 26 of the International covenant on Civil and Political Rights which provides as follows:

" 26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, births or other status."

15. The Defendant submits that an examination of the Judgment in the New South Wales Court of Appeal dated 2 April 2007, discloses that MASON P and HANDLEY AJA were aware that very serious issues relating to the alleged Mortgage existed and in paragraph 5 of Page 3, his Honour MASON P stated:

" Mr Cristian has made allegations of fraud, unconscionable dealing and misrepresentation. Some of these appear to be foreshadowed in the document called, First Cross- Claim Cross Summons, dated 30 October 2006 that was before Hidden J. Other matters were foreshadowed in

affidavits that were read before his Honour and no doubt in the submissions put to his Honour.”

16. The Defendant submits that the Court of Appeal was aware that there were issues relating to the fraudulent misrepresentation and in relation to the fraudulent mortgage, in which the Defendant was deceived into signing an application with Macquarie Mortgages, which at no time disclosed or made the Defendant aware of making a contractual obligation with Plaintiff.
17. The Defendant submits that the fraud of the Plaintiff has affected the nature of the content of contractual rights which is alleged to have arisen against the Defendant and that the New South Wales Court composed by MASON P. and HANDLEY AJA had not the power to make legal an illegal act or to assist the Plaintiff in the carrying out of a deception to deprive the Defendant of her rights and to assist the Plaintiff to perpetrate fraud and breach of duty towards the Defendant and her family.
18. The Defendant submits that an examination of Paragraph 14 of Page 3 of the Judgment of MASON P of the New South Wales Court of Appeal states as follows:

“I propose that leave to appeal against the orders of Hidden J made on 15 November 2006 be refused and that the summons before the court be dismissed with costs.”
19. The Defendant submits that the Judgment and Orders of MASON P. and HANDLEY AJA amounts to violations of the civil rights of the Defendant which have been pleaded in Paragraph 13 and 14 of these submissions and that the Court of Appeal could not make legal an illegal act which has been perpetrated upon the Defendant .
20. The Defendant submits that an examination of the Exhibit marked AS-1 filed by the Plaintiff in the Supreme Court of New South Wales Common Law Division, discloses that the name “Macquarie Mortgages” appears in bold type and also appears below the words, “YOUR LOAN ONTRACT.
21. The Defendant submits that Exhibit AS-1 is conclusive evidence that the Plaintiff and its servants or agents embarked upon a course with the clear intention to deceive and defraud the Defendant and her Family of the property upon which the Plaintiff alleges to have a right. The plaintiff benefits from the Judgment and Orders obtained by fraud from the Common Law Division of the Supreme Court and from the New South Wales Court of Appeal.
22. The Defendant submits that the Judgment of the Court of Appeal made on 2 April 2007 and that of the Common Law Division of the Supreme Court of New South Wales made on 15 November 2006, cannot assist the Plaintiff, and that the Supreme Court and Court of Appeal did not have the power to make legal an illegal act or to assist the Plaintiff in the carrying out of a deception to deprive the Defendant of her rights and to assist the Plaintiff in perpetrating fraud and breach of duty towards the Defendant and her Family.

23. The Defendant submits that Equity Division of the Supreme Court of New South Wales does not have powers to make legal an illegal act and that the Court cannot assist the Plaintiff in continuing to maintain the fraudulent mortgage, upon which the Defendant was deceived into contractual obligations with the Plaintiff by the fraudulent documents which the Plaintiff has marked AS -1, which were filed in the Common Law Division of the Supreme Court of New South Wales.
24. The Defendant submits that in the High Court of Australia in Summers v Cocks (1927) 40 CLR 321 his Honour HIGGINGS J, stated:

“The action was tried before the Chief Justice of the Supreme Court and his grounds to for refusing relief to the plaintiff are (1) that at the time fixed for the performance of the contract (12 January 1927) the plaintiff was not in a position to complete the contract and (2) that even if the contract was good at law, the Court should not in its discretion grant specific performance, because, it is said, the vendor had omitted to disclose a material circumstance.”
25. The Defendant submits that the Plaintiff has not come to equity with clean hands and the fraudulent misrepresentations of the mortgage which was used to induce the Defendant into contractual obligations with the Plaintiff, is strong evidence against the granting of the orders sought by the Defendant.
26. The Defendant submits that the Equity Division of the Supreme Court of New South Wales cannot and should not make legal an illegal act and should refuse the orders being sought by the Plaintiff, and that the Amended Summons should be dismissed with costs.

Date: 8th June 2007


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ARTHUR CRISTIAN