

THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

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40839/06

BEAZLEY JA

22 DECEMBER 2006

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FIONA CAROLINE CRISTIAN v PERPETUAL LIMITED

Mr A Cristian appeared unrepresented.
Mr S Golledge for the Respondent.

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CRISTIAN: I am the power of attorney. I am the husband of Fiona Caroline Cristian and I have a copy of the power of attorney to represent the defendant. I would like to hand --

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GOLLEDGE: I have seen the power of attorney. The plaintiff takes no objection about the representation or appearance. I have no objection to Mr Cristian appearing --

HER HONOUR: Thank you.

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GOLLEDGE: I acknowledge --

HER HONOUR: For the opponent.

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GOLLEDGE: For the opponent.

HER HONOUR: Yes, all right. You put a notice of motion Mr Cristian, is that correct?

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CRISTIAN: I have an amended notice of motion. It hasn't been filed in the downstairs registry and the plaintiffs already have a copy.

HER HONOUR: Is there any objection of this being filed in Court?

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GOLLEDGE: No objection.

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HER HONOUR: I grant leave to file in Court an amended notice of motion dated today's date. Mr Cristian, are you proposing to move on both notices of motions, that is, do you want the order in each or do you now only want the order in the amended notice of motion?

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CRISTIAN: Apologises for being not an expert in law.

HER HONOUR: It doesn't matter.

CRISTIAN: We are seeking a stay of the judgment of that

order of Hidden J on the 15th and time to prepare for the summons in the white folders for the Appeal Court so that we can then argue the case in the Court of Appeal.

5 HER HONOUR: But you have filed a holding summons just looking at the court file. What was the date of the judgment of Hidden J?

10 CRISTIAN: 15 November.

HER HONOUR: And what do the rules say? These things change constantly, what do the rules presently say about when the holding summons should be apart --

15 CRISTIAN: There are circumstances. I believe the defendant at the point was defending and she was seeking 28 days.

20 HER HONOUR: I am just trying to work it out, because there are two documents you can file; one is a holding summons and the summons for leave to appeal. I think they both have to be filed within - either has to be filed within 28 days. Isn't that correct?

25 GOLLEDGE: Yes, that's my understanding.

HER HONOUR: Justice Hidden's summons was 15 November - sorry, decision was 15 November. You are out of time by half a dozen days, is that correct?

30 CRISTIAN: That's correct, and there are circumstances for that that I would like to explain.

35 HER HONOUR: All right. Is there an affidavit that supports the order for the extension of time?

CRISTIAN: I can - there was an affidavit filed yesterday which I can give you a copy, if you don't have one.

40 HER HONOUR: Well, there's an affidavit on file which was - that's the affidavit of Fiona Caroline Cristian.

CRISTIAN: Yes.

45 HER HONOUR: Is that the one?

50 CRISTIAN: Yes, the one filed yesterday of 21 December. You will, in the, there's a marking out (indicated). We marked it out. It was going to say the 8th but we marked it out (indicated). Otherwise, I can give you another copy?

55 HER HONOUR: Well, what this doesn't tell me is why the holding summons was filed late.

CRISTIAN: Okay. The circumstances are such that when Hidden J made the decision, Fiona Cristian, she asked for 28 days. He only offered 21 days. She insisted on 28

days and it was dismissed.

5 Secondly, we then, as self litigants we are learning the rules of the Supreme Court. We filed a notice of motion - two notices of motions; one to put a stay on the order and one to revoke the order of 28 November in a Common Law Court.

10 We went before a hearing with Registrar Howe on 5 December, the Registrar having ignored those two notice documents, the summons. Mrs Cristian wasn't there to argue. She thought it was an automatic process. She then gave me power of attorney to come on 14 December. I then was before Registrar Howe, again presented the fact that 15 he had ignored those two notices of motions back on the 5th and the fact that she wanted them to be addressed and go before a duty judge on the 8th. I stated clearly there was evidence of fraud, amongst other matters, in this case and Hidden J dismissed those two notices of motions, not 20 allowing me to go before a duty judge to argue the case on behalf of the defendant.

25 As well as that, back on 5 December Registrar Howe had indicated to the defendant that she had to go to the Court of Appeal. So she pursued a conversation with members of the Supreme Court in that area and she got very confused because she kept getting told at common law, because it was an interlocutory affidavit matter, it was still 30 continuing and hadn't concluded and until such time it had been concluded there was no matter before the Court of Appeal. Those are many conversations that I myself had come from the Southern Highlands regularly to try to resolve these matters. So we were left with quite a bit of confusion as to the procedures.

35 Anyway, come 14 December, Registrar Howe dismissed those two notices of motions we filed on 28 November. I then wasn't expecting that. I thought that I would go before a judge and discuss with a judge. I didn't know a Registrar 40 had the power to do such things. We were still learning how the Court works. We then spoke to a Registrar on the 5th floor. That's when I realised I had to file a document in the Appeal Court and so we did.

45 That same day, on 14 December, I filed a holding summons, in fact identical to the holding summons that you have before you today, an affidavit, not the same affidavit, and a notice of motion. I waited for those documents to be filed but it went to a Registrar and a Registrar then 50 came forward with a handwritten letter, which I can show you, at five minutes to five that day telling me this is not the correct procedure and that added further confusion to us. As self litigants, it left us nowhere to progress/going forward at all. We were actually feeling 55 quite despondent.

I then went and sought a duty judge, a James J, who sighted the letter, had a quick discussion with him and

asked me to come back to his Court the next day, which I did at midday on 15 December. I then spoke with James J during that afternoon and he clarified that the letter needed to be pursued in the Court of Appeal. He couldn't
5 advise me, understandably in his position. And so, I then went through the process of filing again for a hearing, which we had yesterday before Simpson J, for the notice of motion to put, again put a stay on the writ of possession. She dismissed that on the basis that she believed that
10 the, it was, apologies for the word, appealable, meaning the Court of Appeal, and that's where I needed to go.

So I again went downstairs to the Court of Appeal and I filed the same documents that I filed on 14 December and they were filed. I then went to the plaintiff and sought Gary Koning, one of the solicitors for the defendant, and gave him a copy of the notice of motion, the affidavit and the holding summons.

I rang Simpson J, assuming that Simpson J would be - I didn't know at that point there was a duty judge. I had already spoken to the Registrar on the 5th, in fact, two different Registrars, indicating Simpson J was the location where the next step for this process for me. So
25 I rang Simpson J whilst in the presence of Gary Koning and arranged to seek a time to come back before her to discuss the Court of Appeal. I got a message back from Simpson J saying from her assistant, and the words were, if I can find them, she will not hear an application from us.

I was very perplexed again. I went down to the Registrar. I went back to the, went to see the Registrar on the fifth floor. She said there's no other duty judge at all that would help us in the Common Law Court. I told her it's at
35 the Court of Appeal. She could not tell me that a duty judge at that point existed in the Court of Appeal and that I had to ring again tomorrow. I decided to stay back here. And so, what I did on the 8th floor, it was another judge on duty, Equity Court. His name was Brereton J I believe, Brereton, and at about 7 o'clock last night he spoke with me and I explained the dilemma that I had and he told me there was a duty judge, that's a vocational duty judge for the Court of Appeal and it was left that I have to ring this morning to then follow the process.

So that was what I did this morning. I then spoke to Registrar, a Peter Schell, explaining the dilemma and then he rang me back in 10 minutes to tell me the appointment here at quarter-past-two today. That's been the avenue we
50 have undertaken to reach this point.

My understanding of the holding summons in place gives us 3 months to allow us to prepare on ordinary summons, to file the white folders into the Appeal Court so we can
55 then argue this case at a professional manner.

I say in light of the fact that when we were served the statement of claim, which I believe was 17 or 18 July this

year, we undertook a process of Legal Aid and then a pro bono barrister which took us really to the end of September when we realised we were not going to get any Legal Aid or any pro bono barrister within this case matter. It was dawning on us as self litigants: Oh my God, we're going to do this on our own.

From basically 1 October till the judgment day on 5 November Fiona Cristian at every time insisted it wasn't fair that this matter be pushed. Mr Golledge was keen that the plaintiff's matter be dealt with as soon as possible. We were requesting plenty of time.

We are dealing with a family home here. We only have the property owned by Fiona Caroline Cristian, which I must also clarify is not an investment property. It's the only home she has. There is no investment in any other properties. There is no liability for Capital Gains Tax. We don't meet the Capital Gains Tax requirement. There is no Land Tax on this property. She lived in that property for almost 2 years. She then left that property to live in the Southern Highlands where appropriate schools for the children were available. So she rented out short term holiday rental to service their financial obligations as a decent Australian citizen would do.

HER HONOUR: As I have been listening to you, I think there is something else I read. It might have been in justice Hidden's judgment. The loan was taken out in 2005, is that correct?

CRISTIAN: Correct.

HER HONOUR: And no payments have been made at all?

CRISTIAN: We told the bank, the staff at the bank that they had given us the wrong product. We told them at that point that the fraud had been conducted. We were, and as I've explained in the affidavit filed with this holding summons, the product and what - I have documents I can show to you, your Honour, showing clearly the approval documentations that we received from the plaintiff telling us the product that was being supplied, signed off by James Angus, who has two hats; one for Macquarie Mortgages and the other hat for Macquarie on behalf of Perpetual Limited. You can see clearly that's the same gentleman, the creator of both documents for the plaintiff. And to forward to us, even giving us an order of discovery, to provide us with records and they have not provided any records of anything.

HER HONOUR: But you did borrow money, is that correct?

CRISTIAN: Your Honour, there is no money. Your Honour, 1933 the gold standard was removed. The money, as we know it, is not gold and silver. We are dealing with promissory notes, we are dealing with bills of exchange, we are dealing with credit. Credit is a different matter.

And as we can cite in the document, which we will argue in the Court of Appeal that we will ask the plaintiff to prove to us, and that will be presented, prove to us that money was lent to us.

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HER HONOUR: Did you sign a mortgage?

CRISTIAN: The mortgage was signed on behalf of a product that we were to receive. That product was not supplied. Your Honour, we have a situation here that the plaintiff has conducted fraud. I say this: How can a contract come into existence with no cause for the existence of that contract? What we are saying is that there was no agreement in place for the contract to exist.

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They are saying that the contract is a contract and there it is, out of thin air identifying on the desk, telling us you signed that excluding the history behind that formulation of the contract. This dispute is about the prelude that led to that contract. We have the evidence to show clearly that what was agreed and what was supplied were two completely different products, working in completely different ways and it is not what we sought or was promised to be supplied.

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HER HONOUR: What were you supposed to pay under the product that you say you --

CRISTIAN: Nothing to pay at this point. We don't have a contract. The contract was void.

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HER HONOUR: That's not what I asked you.

CRISTIAN: Until the contract is certified that it's a valid contract, then we can discuss anything about terms of credit.

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HER HONOUR: Not necessarily. Was the property that you have talked about, that was purchased in 2005 wasn't it?

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CRISTIAN: No. It was, the property was purchased in 2001. It was owned by us and then over time she became the total deed holder of the property. Then we sought refinance to renovate the downstairs of this property so she could eventually move back into the property and continue renting upstairs. That was the plan.

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HER HONOUR: And so, the refinance was through Perpetual Limited, is that correct?

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CRISTIAN: Yes. We didn't know until the day they arrived and we believed we were dealing with Macquarie Bank. There was no documentation mailed to us to tell us who the lender was of the particular contract. That was dumped on us at the last moment.

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HER HONOUR: And in your intention to refinance, what was the amount that you were going to refinance?

CRISTIAN: I don't want to - your Honour, is that the appropriate time to be discussing this here when we really need --

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HER HONOUR: It may well be if you want any relief now, even if you have got the wrong contract. Let's just assume for the purposes of the argument that you thought you were getting product A and you got product B. It may be that you would still, in order if you come to Equity you may need to make the payment under the product that you understood it to be.

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CRISTIAN: We were awoken to the monetary system after the event and because of those circumstances it opened up avenues of comprehension in dealing with this matter. The idea of, as I stated in an affidavit which I can present to your Honour, which is the 7th affidavit, it is the original, here it explains very clearly a court case, a precedent established in 1960 called the Credit River case. In this case, a jury of 12 determined very clearly before Mahoney J that no money was lent, although, the lender said the money was being lent. It clearly details, and was validated when the jury gave the defendant, who won that case on the basis that the - apologies, I'm trying to explain. The plaintiff was seeking a foreclosure on the property. That was stopped by a jury of 12 when it was proven when the bank manager stated very clearly that, no, the bank created the money out of thin air. This is what the Perpetual Limited has done as well. They created money out of thin air and we ask them through the professional ledger and journal where is the money to lend us? Did they have the money to lend us? Prove to us the money that they lent to us. We have a clear argument in place. We wanted that to be determined in the Court of Appeal your Honour.

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HER HONOUR: Are you going to renovate this property, is that correct?

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CRISTIAN: That was the intention, yes.

HER HONOUR: Did money go into your bank account?

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CRISTIAN: Credit was issued, went into the bank account.

HER HONOUR: And how much?

CRISTIAN: I don't have those figures in front of me. I have to go back to the records with the defendant.

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HER HONOUR: I have seen one document which seems to indicate you owed \$700,000.

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CRISTIAN: That document keeps coming in the mail and is based on no contract. We do not have a contract. The plaintiff is persisting that there is a contract. Now, without a contract there would be no parties to this

matter. For them to seek a writ of possession they are saying a contract is in place and is valid. This argument wouldn't even occur if I supposed a contract was in place. I am saying that the contract is invalid and is fraud.
5 This argument is about a contract that is not based on any agreement that was established prior by the parties involved. This is why we are saying fraudulent misrepresentation, unconscionable conduct, tort of deceit, among others, of this.

10 Hidden J, all of the evidence was presented to Hidden J. The defendant did not have the skill at the time to argue this point. She assumed that presenting documents to the Court, that the justice would do, to consider justice equity.

15 HER HONOUR: There is a--

20 CRISTIAN: So I'm relying --

HER HONOUR: I am just looking through the contracts at the moment. You have certainly a signed document.

25 CRISTIAN: We were deceived into signing a document. We were seduced into signing documents based on deception your Honour. There were no meeting of the minds in the formation of this contract.

30 And I have the evidence to show you clearly that in the mail on the same date that the contract arrived were the approval documentation. In that contract, the contractors do not tell you, to the layman, what is the basis of this contract in terms of how does this product perform. At the time, being laymen, we were never advised as to what the meanings of, in-house meanings of Macquarie Bank in terms of Macquarie, what they called Mortgage Saver Home Loan. It doesn't tell me anything. Macquarie Saver Home Loan, what does that tell you the product is/explain how the product works?

40 We also received approval documentation in the mail at the time by the same gentleman with the same hat telling us the defendants apply, and myself as co-signatory, we were applying for a Macquarie Choice Loan Credit, which is what we applied for in the loan agreement. A loan of credit works very differently than a principal and interest product. With a line loan of credit you can draw money in and out like an overdraft. With that principal and interest, principal and/or interest only product you can't do that.

50 HER HONOUR: Where is the document which you say constitutes a loan in the case that you borrow the line of credit? I am looking at an affidavit at the moment that you signed that is dated 29 October 2006. Is that the borrowing or the document that you talk about being the agreement you reached, that is, to have a line of credit? Is that attached to that affidavit?

CRISTIAN: I'm not sure your Honour. I have to check it again, but I have the document here to show you.

5 HER HONOUR: I hand down that affidavit. Would you have a look at it and see whether the agreement as you understood it was supposed to be is contained in those papers?

10 CRISTIAN: Yes, it is.

HER HONOUR: What annexure is it?

15 CRISTIAN: Your Honour, I didn't - in my car I have the other files that would provide me with all the documents with all the annexures. If I can refer to the annexures of the - I wasn't --

20 HER HONOUR: That's the document in the Court files so that should have all the annexures to it. That's why I asked you. Could you just indicate to me where. I think that's the main affidavit, is it?

25 CRISTIAN: That's the only affidavit that I have provided, that's correct.

HER HONOUR: So where is it in that file?

30 CRISTIAN: Can your bear with me a moment and I will see this.

HER HONOUR: Yes.

FI:CAT

CRISTIAN: Okay. I'll start with a sequence of exhibits. AC 12 shows a fax cover sheet from the Macquarie Mortgages agent stating that the product is to be a Macquarie Mortgages line of credit. That is the first thing.

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HER HONOUR: I will take a note of these and then I will look at the documents.

CRISTIAN: That is AC 12. We then received AC 13 and that came from James Angus. And then we received AC 15 and then we received AC 16, which is what came in the mail with the contract, AC 16. And also there was another one with AC 16. We actually received two letters in the mail. One was addressed to Fiona Caroline Cristian and one to myself, both from James Angus and both confirming a Macquarie Choice line of credit. When we saw that and the experienced mortgage broker came to our premises, it was understood that that's what we were getting. He checked the contract for us and we signed it that day, so we are not arguing that we didn't sign. We did sign a document that day. That shows the deduction or the deception--

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HER HONOUR: What is the contract which you say is now relied upon by the opponent which is different from the line of credit?

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CRISTIAN: That is called the Macquarie Bank Mortgage Saver Home Loan, AC 17.

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HER HONOUR: If I can have those back I will just take a little time to look at those.

CRISTIAN: Can I also allow you to cite these and make photocopies and return them to the Court?

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HER HONOUR: Is this new material?

CRISTIAN: Yes, it is, but this is material showing - we have got a Macquarie News Flash, an internal document issued to brokers and it states very clearly here in the document "News Flash 15 July 2005, to be effected Monday 18 July 2005 that changes to Macquarie Executive Choice" and it says "Executive Choice has now been customised to a line of credit LOC". Now that was known by the brokers on 15 July.

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HER HONOUR: Just a moment. I just want to take a few moments just to try to understand these documents. Now I need a little bit of an understanding as to what happened in the Court below. I know an order for a bit of concession has been issued, but what has happened? Was there a defence, or a cross-claim filed?

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GOLLEDGE: There was a defence filed which I could hand to your Honour.

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HER HONOUR: It should be on the Court file, Mr Golledge. Just so that you understand, Mr Cristian, a separate file