

HS:CAT

solicitor and I wish to look at the relief.

5 CHRISTIAN: Are you suggesting this case can go back to the Common Law Court and continue, or re-opened so the evidence can be argued further based on the cross-claim and the whole summons and the notice of motion filed for the Court of Appeal and can be dismissed? Is that what you are suggesting your Honour? Because I will be happy to do that.

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HER HONOUR: What should be dismissed did you say?

15 CHRISTIAN: If this cross-claim has not been dealt with correctly in the hearing the defendant when I was not acting as power of attorney, I will ask, if the decision of Hidden J - and we are saying he erred because the evidence was clear to him - I would be happy for the whole summons and notice of motion and affidavits to be filed in the Court of Appeal, be dismissed, with your instructions for us to open the case in the Common Law Court and be determined in that Court and to set a date for that next year, meaning we put a stay on Hidden J's judgment and allow the case to be argued in the Court with the cross-claim and I will be more than happy to remove the document from the Court of Appeal.

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Can I be excused to go to the bathroom please?

HER HONOUR: Certainly.

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MR CRISTIAN LEFT THE COURTROOM

MR CRISTIAN RETURNED TO THE COURTROOM

35 GOLLEDGE: Your position on the matter you are grappling with that the existence of the cross-claim that did not prevent him from properly dealing with an application for summary judgment and, having got that, would not of itself mean the matter isn't properly the subject of the proceedings in this Court .

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The authority we contended for before Hidden J is the same as in the Court of Appeal, that you have a right of possession, you get a bundle of rights upon registration of a mortgage, and an associated right including the right by statute and a bundle of other rights essential or critical, all bound up when you get the mortgage, and including the right of possession arising upon an event of default.

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That judge was persuaded by that and gave summary judgment.

55 The Court of Appeal may well take the view that it shouldn't have, and those authorities that say as soon as there is a default are wrong or should not have given it by their discretion, those are courses that the Court of Appeal could properly take, and it may be it would be a

very unsatisfactory outcome, if it goes to the Court of Appeal and summary judgment is overturned, the case goes back and, for that reason, ends up very messy, but it is not an inappropriate course.

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CHRISTIAN: I think it would be unfair considering it is a multimillion corporation concerned and I do not think it would be messy that she is given every opportunity to defend herself and I believe I am competent enough to do that for her and get to a position where the defendant can argue her position, which I believe has not happened, because from basically 1 October to the judgment, 5 November, the defendant and myself only had six weeks to deal with the multinational corporation and learn about the law when we knew nothing beforehand, which statute the Court of Appeal would give us leniency to make the case without pressure and they have sufficient power to handle such a small item on their books .

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I am not saying that makes it just but there needs to be equity and justice here and Hidden J erred we say and he was persuaded to make a decision and as stated in the transcript, he says: "I have seen the documents". It does not say: "I have read all the documents".

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In question this, did he comprehend the evidence presented to him that I am doing with you? If that is the case, the cross-claim was not dealt with properly and I am happy this matter be concluded here and we seek your permission to strike out the judgment order of the stay, sorry, the order for writ of possession and revoke it and give the defendant the opportunity to defend herself against the monolith.

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GOLLEDGE: The figures, the monthly repayment on the advance of \$664,000 at the interest rate of 6.69 percent is \$3,700 per month, the current interest rate given the rise in the meantime is 7.5 percent, and that is a monthly figure of \$4150. Doing rough maths, a year's payment of 3,700 a month is \$44,400 to take the loan to September this year, and then three further months.

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CHRISTIAN: Can I interject your Honour.

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HER HONOUR: No.

GOLLEDGE: If a term of this type was imposed the bank would be content with the 3,700 applying until 30 November. We cannot work out precisely when the Reserve Bank changed the rate and the interest for this month going forward.

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HER HONOUR: Is that \$51,800.00?

GOLLEDGE: \$51,800 until 1 December and then for this month \$4,150.

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HER HONOUR: Payable on the 30th of each month?

GOLLEDGE: Yes, which means the total arrears as at the end of this month will be \$59,950 and \$4,150.

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HER HONOUR: What do you do about February?

GOLLEDGE: At the end of the month.

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HER HONOUR: 28 February?

GOLLEDGE: 28th of each month.

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CRISTIAN: May I interject?

HER HONOUR: Yes.

CRISTIAN: This scenario is like saying I offer a job to a labourer and he has to push a wheelbarrow up a hill but I have to take his legs off --. When the defendant and myself came to signing the contract in the scheme of things that were being thought through to manage the affairs of the family - the holiday house, it being put in place for holiday rentals to service the obligations - because of negligence, unconscionable conduct, fraudulent misrepresentation, it sabotaged, cut off the legs of the defendant in being able to service her obligations in view of this fraudulent act.

Now you're suggesting back pay has to be done and no consideration is given for what has occurred in damaging the ability of the defendant and her life to deal in the manner she would have dealt with professionally prior to signing the contract. So the contract not only misled the defendant and myself but it also destroyed the ability to apply what was intended by the defendant.

So I say again that this is not justice or equity because it ignores the matters of the big picture. So these are the things that were tried to be dealt with by Justice Hidden and stated in affidavits right up until judgment day and had been overlooked. We also needed each step of the way as after Hidden J when we filed our motions and with Howie J and they got dismissed and Simpson J they got dismissed.

Here I am defending a suburban housewife seeking equity and justice and the question of the whole story like making a decision about outstanding payments is cutting her legs off and, so what, too bad. So I say this is again a circumstance that should be ignored and dismissed.

If we are going to discuss payments we need to discuss

5 compensation and a range of issues to be determined and all should be done together in the upper court or the common law court otherwise I consider it unjust and totally unreasonable, your Honour, very unfair.

HER HONOUR: What was the sum?

GOLLEDGE: \$664,000.00.

10 HER HONOUR: Having heard argument I continue to remain of the opinion that a stay of execution of the writ of possession is to be granted then that should only be on a proper basis that there be a payment of arrears of interest on the loan as stated by the claimant - sorry, I
15 withdraw that.

I consider there should be a payment of arrears of interest and continued payments of interest on the basis that the loan that the claimant asserts that she should
20 have got was one which was a line of credit with an available interest rate at the time of the loan was 6.69%.

CRISTIAN: What happens to the months that the house is left empty because of the whole period - because of this
25 situation and you're saying that the sufferance of the defendant is too bad. As a result regardless of this mischievous contract, the defendant must still be - you're enforcing a payment under those circumstances.

30 HER HONOUR: Well, I have indicated the basis on which I am prepared to grant an order for possession. I should add that there is evidence before the court that regardless of the manner in which the funds were transferred the only effect was fully drawn as at the date
35 of settlement.

Now, Mr Cristian, your wife is without an attorney. You can either accept those conditions and I will grant your stay on that basis or the application will be dismissed.
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CRISTIAN: Going back to the common law court, where the cross-claim still has not been dealt with, we have a right that Justice Hidden has erred because he has not conducted his affairs and basically not done his duty for the
45 defendant as a judge and if that is the case then we can forget even applying to the Court of Appeal.

Now we can say thank you for annulling (?) the circumstances that we ask Justice Hidden's decision be stayed and revoked because he erred and you're confirming that. The cross-claim was not dealt with.
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HER HONOUR: I would be prepared in the circumstances to extend the time in which to file a summons for leave to appeal. I think if they are taking steps within the court during that period but if you want a stay of execution of
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the writ of execution --

5 CRISTIAN: That's blackmail, your Honour, and I would even say maybe someone has got at you for even suggesting that and this will be noted.

10 HER HONOUR: I can do one of two things: I can make the order in those terms or, alternatively, I can reject your application for the stay of the writ of execution for the possession. Do you want to think about that?

15 CRISTIAN: In your position of authority in the supreme court, do you have the authority, considering what you have stated in this hearing, that Justice Hidden has not conducted his affairs properly because the cross-claim was not dealt with, and if you are saying that, then I am insisting that be dealt with and that is a greater priority than even now going to the Court of Appeal.

20 HER HONOUR: This matter comes before me as a matter of urgency to extend time within which to extend time for leave to appeal and stay the execution of the writ of possession.

25 There remains now outstanding in the common law division your cross-claim and that has to be dealt with. I assume that stays in the list. There are also parts of the claim of the defendant, the opponent here, in terms of recovery of money. I am indicating to you that those matters still are to be dealt with in the Court of Appeal. They have not been determined. They cannot come to court until they are determined. The only claim that can be dealt with in the Court of Appeal is your application - application for leave to appeal which is out of time but I am prepared to extend time. I don't know what will happen when that comes before the court; it may refuse leave.

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40 CRISTIAN: We will do all we can. We consider there is an element of bias in the conducting of this whole hearing in the supreme court. It is all over the internet and I am continuing to spread this matter. The Australian people need to be aware of this case and there is bias and that has been stated - to a state we have requested on the basis that Justice Hidden has erred and you're trying to bring in a contract that you say we are liable and the contract has not been determined as valid or not.

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50 How can you enforce a contract when even you yourself has admitted that there are concerns or vagaries about the matter.

55 I am insisting as an Australian citizen, a tax payer, and for me wife, we seek justice and equity. Yes, we don't understand all the incredible bureaucracy of the supreme court and the steps but you have revealed something to me in this hearing and you're saying that we should go back and apply for leave to appeal in the common law court on the basis that Justice Hidden has not dealt with the

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cross-claim - if I understand that correctly as a layman.

5 HER HONOUR: Justice Hidden made clear in the time that he had it before him that he could not deal with the cross-claim. Mr Cristian, will I made the orders in my terms?

CRISTIAN: You can dismiss my summons.

10 HER HONOUR: Do you still maintain your application for time to appeal?

CRISTIAN: Yes and we will find the procedures.

15 HER HONOUR: What I can indicate to you is that there is a scheme within the court - I don't know whether this has been suggested to you or not - there is a scheme called court-appointed referral for legal assistance. I can hand this down to you to read and I can indicate what the steps are.

20 CRISTIAN: Yes, I will be happy with that, your Honour.

25 HER HONOUR: I will give you a reference to it - Part 66A of the Uniform Civil Procedures Act. I think it is part of the Supreme Court Rules. There has been an introduction of new rules - most of the Supreme Court Rules have been taken over and this is still within the Supreme Court Rules.

30 CRISTIAN: I do note that because we are in common law and I need to have further time to investigate - a corporation takes a human being into a common law court and I understood there would be a jury there?

35 HER HONOUR: No.

40 CRISTIAN: It seems to me, as a layman, to be blasé that a fictional entity can come into a common law court dealing with human beings and deal with the case like that and that sounds absurd.

HER HONOUR: I will read the provision to you. Rule 1 says (read). I won't read it all.

45 CRISTIAN: Legal assistance is best. Are you talking about lawyers and barristers?

HER HONOUR: Yes. (Continued reading rules).

50 CRISTIAN: In terms of us moving forward, if I am prepared, and my friend, to continue as power of attorney and manage this on our own, we would like to find or pursue the avenues to have time to prepare the case as self-litigants because I am confident I can do that, as
55 any barrister, and if Justice Hidden had given the defendant a reasonable amount of time - six weeks is not a lot of time - by the end of September and all of October and part of November - six weeks for a case of this

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structure.

5 HER HONOUR: You talk about "a case of this structure" -
one of the things we can take into account is the nature
and complexity of the proceedings, there was a case like
this where there were very experienced senior and junior
counsel and they were of great assistance to the court.

10 Now, I would be prepared to refer - your wife is the only
claimant?

CRISTIAN: Correct.

15 HER HONOUR: -- to refer her to a barrister and solicitor
in the pro bono legal panel for legal assistance.

20 CRISTIAN: And that could be done on a - there is a way we
don't give away all our rights to a barrister. We can
conduct the case with them and instruct them in court
because we feel best if we have some control over our
defence.

25 HER HONOUR: You can give instructions to a barrister and
he has a duty to the court - they act on the information
you provide. They have an over-riding duty to the court.

30 I propose to make an order under Part 66A that the
claimant, Fiona Caroline Cristian, be referred to the
Registrar for referral to a barrister and a solicitor on
the pro bono scheme for legal assistance. The referral is
so as to provide advice in relation to the proceedings.

35 CRISTIAN: And a barrister brought forward by that panel,
do we have a choice in who we select?

40 HER HONOUR: No. I think at this stage I would only order
that advice be given in relation to civil proceedings. I
think also I would make the referral under A, B, C and D.
So that is "for advice or representation ... (read)"

CRISTIAN: I can get that from the internet?

45 HER HONOUR: I think nothing will be put in place properly
until some time next year because of the Christmas break.
I make that referral both in relation to the summons for
leave to appeal and for balance of the common law
proceedings.

50 CRISTIAN: Does that allow the defendant to conduct the
argument in the court room? I am considering the evidence
so far today, as well as other evidence that we have.
Does that mean we are able to argue on another date at
another time in the common law court with another duty
judge?

55 HER HONOUR: Your common law proceedings have to be dealt
with just in accordance with the rules of court and I
proposed there be a barrister and solicitor appointed from

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the panel to conduct those proceedings on your behalf. So the solicitor and barrister will do the legal argument in court and the affidavits - whatever it be - that the court directs.

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So I will put this clearly on the record:

10 There is before me a notice of motion which was filed on 21 December 2006 in which the claimant sought an extension of time for leave to appeal from a decision of Justice Hidden given on 15 November 2006.

15 There is a summons for leave to appeal so what I propose to do is to grant an extension of time to lodge a summons for leave to appeal from the decision of Justice Hidden made on 15 November 2006 until - and I would be proposing February given the referral and extend time to file the summons until 2 March 2007.

20 CRISTIAN: Is that an ordinary summons?

HER HONOUR: A summons for leave to appeal.

25 There was also filed in court an amended notice of motion in which the claimant, Mrs Cristian, sought a stay of execution of the writ of possession that was ordered by Justice Hidden on 15 November 2006.

30 As the record of proceedings will show, I have indicated the only basis on which I was prepared to stay the execution, was on terms that are disclosed in the transcript but, in essence, which would have required payment of arrears of interest on the contract as asserted by the claimant and ongoing payments which given that the evidence before the court discloses that the claimant has had the benefit of the moneys in the sum of \$664,000 for a period in excess of twelve months.

40 Mr Cristian, on behalf of Mrs Cristian, has indicated in those circumstances he did not wish to press for a stay of execution if those conditions were to be imposed and in those circumstances the order which is sought in the document entitled amended notice of motion which was filed in court today is dismissed.

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5 HER HONOUR: There are 2 applications effectively before
the court. If successful in one and you can be successful
in the other. I think in respect of the order sought in
the documents I have, notice of motion, which is for
extension of time I think the costs of that notice of
motion ought abide the outcome of the determination of the
leave to appeal.

10 In respect of the stay, I think in those
circumstances that the plaintiff should be ordered to pay
the costs of the application for the stay. In that
regard, I would note for the purposes of any assessment
process that the players has been in court for
approximately 2 and half hours and I would have divided
15 the argument equally over that time although overall there
has been perhaps greater time spent on the time - until I
really worked out what was to happen on the stay.

20 GOLLEDGE: I don't wish to be heard in opposition to that
sort of apportionment.

25 HER HONOUR: I would direct that on any assessment of
costs that the time on the appearance of the amended
notice of motion relating to the stay should be assessed
on the basis that the time in court was no more than an
hour.

30 CHRISTIAN: Your Honour as already stated for the record
that the circumstances of the offer for the estate, was
unacceptable and, on that basis I have to refuse it
because I considered it as a form of blackmail and, I
don't consider that as equity or justice in this conducted
hearing.

35 HER HONOUR: Those matters are on transcript. I think,
both, Mr Christian and you Mr Golledge, I thank you for
your assistance.

40 FURTHER HEARING ADJOURNED