

THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 ASSISTANT REGISTRAR HOWE

THURSDAY 14 DECEMBER 2006

13403/06 - PERPETUAL LIMITED v FIONA CAROLINE CRISTIAN

10

Mr S Golledge for the Plaintiff
Mr A Cristian with Mr Wilson for the Defendant

15

A CRISTIAN: I'm power of attorney for Mrs Cristian. I'm her husband. I have a copy of the power of attorney, I'm representing her.

20

REGISTRAR: It's Mr Cristian is it?

25

A CRISTIAN: Yes. You asked the defendant to apply to the Appeal Court. Your Honour, I want to point out that two notice of motions were submitted on 28 November to this Court. They were ignored. I'm here to address that matter with you Registrar, that those two notice of motions are dealt with. Last night I came here and saw a judge to get a stay till 5pm today, and there is no matter before the Court of Appeal at this point because this is an interlocutory case. That case has not been resolved, it hasn't been concluded. There is no matter to go to the Appeal Court.

30

35

REGISTRAR: What happened before Justice Hulme yesterday?

40

A CRISTIAN: We just - I just asked him to - because we found that you provided a stay till 5pm last night. I wanted to make sure that that stay was put to 5pm today to give me--

45

REGISTRAR: And did he?

A CRISTIAN: Yes, he did. I have a copy of that here which I can present to you. And I have an affidavit that was also filed on 28 November. These two notice of motions and affidavit were absolutely ignored, and I want that addressed and dealt with today, and I want this to go before a judge.

50

REGISTRAR: Yes, Mr Golledge.

GOLLEDGE: Both notices of motion should be dismissed.

55

REGISTRAR: What do they seek, because I don't have the file. I take it Justice Hulme has got the file.

A CRISTIAN: One is for a stay and one is to revoke the judgment.

REGISTRAR: The judgment? Whose judgment?

A CRISTIAN: Justice Hidden.

5

GOLLEDGE: On 15 November, Justice Hidden gave summary judgment for possession of the security property. A motion has been filed in these terms, that the judgment be revoked. On the last occasion on 5 December, you noted that that seemed to be a matter that could only be raised in the Court of Appeal and the matter was stood over today for the purpose of allowing whatever appeal proceedings might be contemplated to be instituted, and a stay was granted on the last occasion as Mr Christian says to allow that to happen. Nothing has happened in that context at least and so the matter that remains before the court is those motions which we say ought to be dismissed. If my friend wants them to go to a judge and the judge is available, I'm happy to make the submissions to a judge, but that's what I say to you and that's what I'll be saying to a judge if there's one available.

10

15

20

A CRISTIAN: Justice Hidden erred in his decision, we have the evidence to prove that he's erred, and I want to proceed with that matter with a judge. It can be with Justice Hidden himself or it can be with another judge, I don't mind. I will prove to the court that the plaintiff has - the contract was manifested out of thin air. There was - Justice Hidden's decision was based on as if there was no cause for the existence of that contract. I'm going to say to that judge can a contract exist without a cause, meaning that the prelude for that contract's existence was completely ignored in this hearing, and I'm going to be sure that that matter is dealt with and that the evidence is presented to show that unconscionable conduct, fraudulent misrepresentation by the plaintiff, tort of deceit and other matters were conducted by the plaintiff. I'm here to argue that today. I have the evidence and I'm ready to fire.

25

30

35

40

REGISTRAR: If Justice Hidden made a mistake in his judgment, surely an appeal lies with the Court of Appeal.

45

A CRISTIAN: When this matter is concluded in the Common Law Court, Registrar, I will take it to the Appeal Court.

REGISTRAR: Well Justice Hidden has concluded it.

50

A CRISTIAN: It has not concluded. This case is still continuing, it's interlocutory. We've put notice of motions in to knock out the stay and to revoke the judgment, so we're still in the Common Law matter. I want it kept in the Common Law matter.

55

REGISTRAR: When did you file those two motions?

A CRISTIAN: On 28 November. I have copies of those file stamped documents here and the affidavit.

REGISTRAR: They're both on the twenty eight eleven.

5 A CRISTIAN: Yes, all three documents, two notice of motions and an affidavit.

10 REGISTRAR: I'm not worried about the affidavit. One is for a stay and one is to revoke Justice Hidden's--

A CRISTIAN: Yes, the stay is to stop the plaintiff from accessing the property and changing the locks. The property is still the defendant's at this point until we believe that the case is concluded. We request of the court that the plaintiff has no access to that property. It is not their property at this point.

15 REGISTRAR: Well I directed Ms Cristian to go and take proceedings in the Court of Appeal. None have been taken. It seems to me the best thing I can do today is just dismiss the two notices of motion of 28 November.

20 A CRISTIAN: I would reject that dismissal. That is contempt of court, Registrar - I mean, Registrar. You're in contempt of court. These two notice of motions need to be dealt with.

GOLLEDGE: And costs, Registrar?

25 REGISTRAR: Any reason why the defendant shouldn't pay the costs? D to pay plaintiff's costs.

GOLLEDGE: As the court pleases.

30 WILSON: You have no jurisdiction, Mr Howe. You're ignoring that are you, Mr Howe? You're in contempt of court, Mr Howe.

35 REGISTRAR: Mr Wilson, go outside please, I've dealt with this matter.

40 WILSON: You haven't dealt with it. You've got no power.

45 REGISTRAR: Both of you please remove yourself from this Court.

A CRISTIAN: You have no right to dismiss these notice of motions.

50 REGISTRAR: Are you going to go outside or not?

55 WILSON: You're only a Registrar, you're only a - you've got no jurisdiction whatsoever. He requires a judge, Registrar. You are headed for prison.

oOo