

THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 ASSISTANT REGISTRAR HOWE

TUESDAY 5 DECEMBER 2006

13403/06 - PERPETUAL LIMITED v FIONA CAROLINE CRISTIAN

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Mr S Golledge for the Plaintiff
Defendant appeared in person

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GOLLEDGE: There's two notices of motion filed by
Ms Cristian which are the matters before the court.

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REGISTRAR: I've got a notice of motion that was filed
on--

DEFENDANT: It was filed on the 28th I believe.

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REGISTRAR: 28 November is it?

GOLLEDGE: There should be two motions filed on that day.

DEFENDANT: Yes.

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REGISTRAR: Yes, filed the same date. Judgment order
issued Supreme Court Equity dated 15 November be revoked.
It's the same in the other one too.

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GOLLEDGE: The other one is a stay I think pending the
outcome.

DEFENDANT: Yes, a stay.

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REGISTRAR: A stay until it is revoked. Whose order is
this?

GOLLEDGE: Justice Hidden.

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REGISTRAR: This is Court of Appeal stuff isn't it?

GOLLEDGE: Exactly.

REGISTRAR: I think you're in the wrong court.

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DEFENDANT: Well I was told to come back before you by
Justice Hidden, so that's what I've done.

GOLLEDGE: Well with respect, that's not what Justice
Hidden said. The matter was listed after--

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REGISTRAR: Hang on, let's have a look. Hidden, this is
15 November.

DEFENDANT: Yes.

GOLLEDGE: That's right. There was summary judgment.

5 REGISTRAR: His Honour gives orders in accordance with
paragraphs A and B below. Defendant give plaintiff
possession. Order the plaintiff have leave to issue a
writ. Defendant to pay the plaintiff's costs of the
10 motion. The matter should be listed for further direction
before the Registrar for outstanding matters for 9am,
Wednesday twenty nine eleven.

15 DEFENDANT: And that didn't happen because it got left off
the computer records apparently, so when I spoke to them
they said it's probably easiest to put the two things on
the same date rather than having to come back twice.

REGISTRAR: This seems to give the plaintiff possession of
20 the land, leave to issue a writ and wraps up the costs.
What other issues would--

25 GOLLEDGE: There was the monetary judgment aspect of the
claim which the judge has left to be determined and that
was to be the subject - together with a suggestion about
there was going to be a joinder application by
Ms Cristian, so those were the matters to be the subject
of a further timetable. But these motions in our
submission are just - if there's an application to
30 overturn the judgment it's got to go to the Court of
Appeal.

DEFENDANT: Well why was I told to come back here then?

35 REGISTRAR: Well you were told to come back here because
Mr Golledge's client wants to get a judgment for a sum of
money. I can certainly deal with that today. I take it
you want to stay any writ of possession that gets--

40 DEFENDANT: Absolutely, because as I said to Justice
Hidden on 15 November, I was not completed in my case when
he gave his judgment and I was researching information
that would prove that the contract was in fact null and
void and fraudulent and misleading. I have evidence with
me in an affidavit today which unfortunately due to
45 traffic I've been unable to file downstairs. So
absolutely, I feel that he erred in his judgment, I feel I
have the proof of that, so I feel it would be very unjust
to allow the writ of possession to take place when I have
not been permitted to prove it wrong.

50 REGISTRAR: You want to challenge his decision, is that
right?

55 DEFENDANT: Yes, I do.

REGISTRAR: What you'll have to do is file the appropriate
documentation in the Court of Appeal.

DEFENDANT: However, the writ of possession is due to take place tomorrow I believe so--

5 REGISTRAR: Well we can talk about that. When did he make the application, 15 November. You're within 28 days.

DEFENDANT: He only gave me 21 days.

10 REGISTRAR: Twenty one days?

DEFENDANT: He only gave me 21 days. I asked for 28 days stay and was only granted 21.

15 REGISTRAR: The writ to lie in the sheriff's office is 21, yes.

DEFENDANT: Yeah.

20 REGISTRAR: Your 28 days to lodge an appeal with the Court of Appeal expires after 28 days.

DEFENDANT: That was not explained to me.

25 REGISTRAR: Mr Golledge, any reason why I shouldn't stay the writ until five o'clock on day 28?

GOLLEDGE: There's no reason why.

30 REGISTRAR: That's 5pm on the 13th.

GOLLEDGE: Yes.

35 REGISTRAR: Stay execution of writ of possession till 5pm 13/12/06. Why don't we come back here on the morning of the 14th and we'll work out what we do then? Madam, what you might have to do is show Mr Golledge and myself evidence that you have commenced proceedings in the Court of Appeal.

40 DEFENDANT: Well I have an affidavit to go down and file right away. I just was unable to do it before.

45 REGISTRAR: I don't care what you're going to do downstairs. I'm suggesting when we're back here on Thursday the 14th, if you want a further stay of the writ you will have to demonstrate to Mr Golledge and myself that you are taking action in the Court of Appeal to challenge Justice Hidden's decision that possession should be granted to the plaintiff.

50 DEFENDANT: So if I want a further stay I have to prove that I'm taking action--

55 REGISTRAR: Yes, action in the Court of Appeal. I take it this is a possession matter. Stand the matter over in the possession list, 9am--

DEFENDANT: Could it possibly not be a Thursday? It's a

really - is there another day?

REGISTRAR: Well I don't know about not possibly. I mean we're talking about your house and a writ.

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DEFENDANT: I know. There's just a--

GOLLEDGE: I'd resist any further delay on this.

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REGISTRAR: I'm standing it over to 9am on the fourteen twelve, then Mr Golledge we can either see if the defendant is genuine about challenging Justice Hidden's decision or we can talk about your summary judgment for a liquidated sum.

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GOLLEDGE: I think we accept that to the extent we're going to run that, there'll have to be a proper hearing, and we'll get a timetable.

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REGISTRAR: That's right, yes.

DEFENDANT: On that day?

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REGISTRAR: That's the matter that Justice Hidden sent back to me.

GOLLEDGE: Yes, that's exactly right.

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REGISTRAR: Okay, but in the meantime this little kafuffle has turned up. I've got an unrepresented litigant who is seeking to retain some sort of possession of presumably her dwelling. I'm giving her the chance to comply with the rules as to setting aside or challenging the judge's decision. Back here at nine o'clock Thursday 14 December, thank you.

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ADJOURNED TO THURSDAY 14 DECEMBER 2006 AT 9AM

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