

LW:DB:VAT

THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 JAMES J

FRIDAY 15 DECEMBER 2006

13403/06 - PERPETUAL TRUSTEES LIMITED v FIONA CRISTIAN

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Mr A Cristian, defendant's husband appeared for defendant

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CRISTIAN: You are aware of the case filed by the plaintiff. Have you looked at anything of that case so far?

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HIS HONOUR: Not very much, I am afraid. There is nobody here from the other side?

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CRISTIAN: No. For me there is confusion in light of the sorry circumstances that have transpired in the Supreme Court ever since my wife has given me power of attorney over this case. I have a copy here to hand up if you wish to sight it.

(Document handed up)

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SHORT ADJOURNMENT

DB:VAT

HIS HONOUR: Mr Cristian, I have looked at quite a lot of the papers but Hidden J of this court gave the plaintiff judgment for possession of the property on 15 November.

5 CRISTIAN: That is right.

HIS HONOUR: I have looked also at the note that you got from the Registrar. What are you seeking, what are you asking me to do?

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CRISTIAN: Based on that letter we received from the Registrar which you sighted yesterday we wrote a summons. I assume that was the advice given. We are seeking a stay on the judgment for the order of the writ of possession which was already reflected in a notice of motion which was filed on 28 November by the defendant.

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HIS HONOUR: I am not saying that I would give you a stay but you have been told by the Registrar that the plaintiff in the common law proceedings will need to be notified. Have you done that?

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CRISTIAN: We will today.

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HIS HONOUR: I am not going to be able to hear it unless the plaintiff has been notified and given an opportunity. Hidden J found that your wife had no defence.

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CRISTIAN: We had evidence that we believe was not read by Hidden J. We stated again yesterday to the Registrar that we have clear evidence and that I wanted to have this presented before a judge yesterday and I was very wrong in stating that and he dismissed those two notices of motion. I then was perturbed thinking what is the benefit of dismissing those notices of motion. I do not see what the benefit was to us the having those dismissed.

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HIS HONOUR: He simply found that your wife had no defence whatsoever.

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CRISTIAN: We have a contract here that I wanted to explain.

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HIS HONOUR: I am not going to enter into the substantive hearing. I am the duty judge and I have other matters in the list. You have been given this memo by the Registrar. You cannot seek to do anything without the plaintiff having been given an opportunity to come here and make submissions to the court with regard to anything that you are seeking.

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CRISTIAN: We came yesterday to file into the appeal Court the holding summons, the notice of motion and the affidavit. That was also indicated by Registrar Howe on 28 November. We were told that even though the case is interlocutory in the common law, that we should go to the appeal courts, we being self litigants were left with a bit of ambiguity and we made many phone calls to staff in

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the Supreme Court to try and and clarify what is the correct procedure one should take in these circumstances. It has left us where we are one day out of the 28 day judgment made by Hidden J and that was impacted by Registrar Howe when he said: This has got to go to the appeal Court. When we tried to put the notices of motion we relied on and placed on the file on 21 November and stated to Registrar Howe on 5 December.

10 HIS HONOUR: Why haven't you notified Perpetual Trustees?

CRISTIAN: You mean for today?

HIS HONOUR: Yes.

15 CRISTIAN: Because I was under the impression that I needed to have some documents filed so we could serve them on them and that is why we came to see you last night. I apologise if I am sounding vague. It is just that this matter is confusing and I am trying to make sense out of it. That has not been helped by officers of the Supreme Court to us as self litigants. Out of what happened we have created a website and we have launched the website a week ago.

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25 HIS HONOUR: I am not interested in the website. I cannot act as the Court of Appeal myself against Hidden J's orders. I am only on the same level as his Honour. You could seek a stay of execution of the writ of possession but particularly in light of what the Registrar told you I am not prepared to entertain it until the Perpetual Trustee Company has been told about this.

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35 CRISTIAN: I have e-mail correspondence that we have conveyed to them but they are not responding to our correspondence. We faxed them. I bought a folder of correspondence. All that correspondence, it touches on various things in the nature of this case. I was hoping I could have filed the documents on them today so that they had been given notice but because of the Christmas break and the Supreme Court closing down and us not knowing where we stand with the family home, I am doing the best I can as a self litigant on behalf of my wife, who is not here because she is seven months pregnant and with three young children, and she's trying her best to attend and do her best.

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50 HIS HONOUR: I will cut to the chase on this. I am not prepared, and I do not think any judge would be prepared to grant you any relief without the Perpetual Trustee Company having to be notified in advance and having an opportunity of making submissions about any relief you are seeking.

55 CRISTIAN: How do I go about doing that now?

HIS HONOUR: I think you will have to try and come before a vacation judge next week, having given Perpetual Trustee

Company notice of what you propose to do. The judge will be most reluctant to do anything behind the back of the trustee company without hearing its side of the story. I will be quite blunt about it, that is not the position.

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CRISTIAN: That is not my intention, that is not what I was seeking.

HIS HONOUR: No, I am not suggesting that you were being deliberately perverse about this but it is a general principle that the other side should be given an opportunity to be heard, particularly considering what is quite a controversial matter.

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CRISTIAN: Two notices of motion were presented to the Supreme Court in the common law court and they were filed on 28 November. Registrar Howe ignored them on 5 December, blatantly ignored them. It was addressed with Registrar Howe yesterday. He again, in my opinion, completely ignored them by dismissing them. I get the taste that this matter is protecting the bank, a multimillionaire organisation. We are a self litigant family.

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HIS HONOUR: Hidden J said that not a cent has been paid in relation to this loan.

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CRISTIAN: We do not have a contract and we can prove that. This contract was manifested out of thin air, magically, created with no cause. Can a contract come into existence without a cause. A contract normally reflects an agreement. The agreement that was established is not reflected in the contract.

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HIS HONOUR: I am not going to enter into that now.

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CRISTIAN: That is why we are upset and that is why we feel bamboozled.

HIS HONOUR: The trustee company has a judgment against you after a contested hearing. I am not a court of appeal from Hidden J. I understand you are contemplating appealing or seeking leave to appeal to the Court of Appeal against Hidden J's decision. I am not prepared to grant you any relief without the trustee Company having been informed that the matter will be before the court so the trustee company will have an opportunity of putting submissions. It is a general principle that the court should hear both sides.

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CRISTIAN: I had that problem yesterday, two notices of motion, I wanted to go before a judge yesterday and they were dismissed. How can that be fair, how can that be just. Here I am standing before you and you are telling me to have justice for both parties, why was I not given that justice yesterday when he completely ignored and dismissed them. That is unfair.

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DB:VAT

HIS HONOUR: This is a matter in which judgment for possession was given by Hidden J on 15 November after a contested hearing

5 CRISTIAN: Can I point out that my wife protested
constantly and stated in that summons, she kept saying to
Hidden J: It is unfair. She has not been given the time
10 to prepare her defence when the statement of claim was
issued which was served on 18 July. She pursued legal
aid. She pursued a pro bono barrister. The process
concluded towards of the end of September. When it was
clear that we had to act as self litigants to prepare the
case, my wife was under great pressure both by Registrar
Howe as well as Hidden J and a to barrister.

15 My wife, you will notice in the transcripts, continued to
demand she needs time to prepare the case. It was
ignored. All that was considered was how to get another
arrangement and not sufficient time to prepare the case.

20 HIS HONOUR: I am not going to enter into any submissions
you have about the conduct of the matter before Hidden J.
I am not a court of appeal. This is the position. If you
want to make an application, I do not want to encourage
25 you to think that any judge will grant you relief but it
might be, perhaps, that you can get some stay of execution
but in the circumstances I am not prepared to entertain it
without the opponents, the trustee company, having been
informed and having had the opportunity of making
30 submissions too. That is the position, I am not prepared
to grant any relief.

CRISTIAN: Is the summons the appropriate document I
35 should be filing today? Are you able to give me an
indication if I am heading in the right direction?

HIS HONOUR: Just a minute, I am not able to give you
40 legal advice of that sort. Would you like some documents
back. I will hand back the summons and I will hand back
the power of attorney.

The court will adjourn.

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