

THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 SIMPSON J

THURSDAY 21 DECEMBER 2006

13403/06 - PERPETUAL LIMITED V FIONA CAROLINE CRISTIAN

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Mr Koning for the Plaintiff
Mr Cristian for the Defendant

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CRISTIAN: I have a copy of the Power of Attorney here. Firstly, I would like to ask: I have been in the building here since about five past eleven. I have seen both JPs and both have difficulty in allowing me to have signed an affidavit to file with you today witnessing my appearing today. Previously this hasn't been a problem but today I had a difficulty. I came and spoke to the bailiff here (indicated) and said JPs were in the building, but they wouldn't sign the affidavit, so I would like for you to read, fully read, the affidavit and give me time to get it witnessed by a JP in this building, unless you can advise me some way around that.

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HER HONOUR: I am not here to advise you. What is the application you wish to make?

CRISTIAN: I have a notice on me here (handed up).

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HER HONOUR: Are you in a position to undertake to pay any filing fees?

CRISTIAN: Yes, I also have a signatory through the Power of Attorney to cover those fees.

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HER HONOUR: You mean, to make an application?

CRISTIAN: Yes, I have those documents here, and on all previous occasions they have been accepted, so I can have that prepared.

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HER HONOUR: Have you read that, Mr Koning?

KONING: Yes.

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CRISTIAN: I have with me an affidavit that I was intending on filing with that notice of motion. Would you please read the contents of this affidavit, that will explain --

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HER HONOUR: Do you have any objection to my reading it, Mr Koning?

KONING: I haven't yet seen a copy of it. I wouldn't mind having a look (shown).

(copy of document handed up to her Honour.)

5 HER HONOUR: I will hear what Mr Koning has to say about it.

KONING: We don't object to you reading this affidavit.

10 AFFIDAVIT READ WITHOUT OBJECTION

HER HONOUR: Anything else, Mr Cristian?

15 CRISTIAN: I would seek those orders in the notice of motion, to give us an opportunity to justice and equity in this matter.

HER HONOUR: Do you have anything else to say?

20 CRISTIAN: The statement in the affidavit is sufficient at this point.

HER HONOUR: Mr Koning?

25 KONING: It seems apparent that what Mr Cristian intends to do is appeal the judgment of Hidden J. That judgment was given on 15 November. By the judgment, Hidden J ordered the plaintiff to have possession of the defendant's property the subject of the proceedings. I should point out that that property is not a residential address, it is a business property. I can have an affidavit -- I don't think it's in issue. It's a business property on the south coast of New South Wales let out in the short term on the holiday rental market.

35 When Hidden J handed down his judgment, part of that judgment was that any writ of execution of that property was to stay in the office of the Sheriff for 21 days on arrival. As the matter currently stands, the Supreme Court Registry hasn't yet issued the writ to the Sheriff, so we are at a stage at the moment that even when the Registry issues the writ to the Sheriff's office there is a further stay imposed by Hidden J's judgment where that writ stays in the Sheriff's office for 21 days before execution.

45 It has been pointed out to Mr Cristian, firstly, on 5 December by Registrar Howe, that the proper course of action was if he wanted to appeal the decision of Hidden J, to file the proper documents and summons in the Court of Appeal. Indeed, Registrar Howe stayed the execution of the writ until 13 December, and stood the proceedings over until 14 December, to allow Mr Cristian time within which to file the appropriate appeal in the Court of Appeal. Mr Cristian has not done so and, as far as I am aware or understand, no Court of Appeal application has yet been made.

55 It is our submission that if Mr Cristian does want to

appeal the judgment of Hidden J, which seems apparent is what he is seeking to do, then the Court of Appeal is the appropriate avenue for that to happen.

5 Mr Cristian has now had the time to do so but an application to the Court of Appeal for an extension of time can be made and the Court of Appeal can deal with it, and given that the 21 days stay in the Sheriff's office that I mentioned in Hidden J's decision, it seems there is
10 ample time for that application to be made and the Court of Appeal can then undertake the appropriate considerations as to whether a stay should be granted pending that appeal.

15 HER HONOUR: Anything in reply, Mr Cristian?

CRISTIAN: Yes, the defendant, from the date of when the statement of claim was served upon her, which I believe was 18 July, we were in the process of investigating Legal
20 Aid and then a pro bono barrister. Up until that point, which really was concluding towards the end of September, we were still not considering ourselves as being self-litigants, we were under the belief that we were able to have legal representation, so very little preparation as
25 self-litigants in this case had been taken. The plaintiff's solicitor was aware of those matters and there was correspondence accordingly.

When the hearing was brought before Hidden J the defendant
30 repeatedly said that it wasn't fair that she was being pushed to have the hearing without having sufficient time for preparation. That had been stated on numerous occasions, and can be noted in transcripts. I don't have the exact dates, but I believe it was through October and
35 November, being the last one on 15 November when Hidden J made the judgment for the order for the writ of possession. Even on that day she objected and she again stated very clearly to Hidden J she had not been given
40 sufficient time as a self-litigant to prepare her defence, and on the seeing of the barrister for the plaintiff and other circumstances, being a self-litigant and not being able to defend herself in a proper manner, Hidden J made a judgement.

45 We then filed on 28 November two notices of motion in the Supreme Court. I have those copies with me. The judgement of Hidden J was considered to be interlocutory because he made an order for the writ of possession but the case continued in lieu of the fact two other notices
50 of motion had already been filed prior to 15 November, one to join the solicitors to the plaintiff, and the second notice of motion to join Macquarie Walker Pty Ltd to the plaintiff in this case. Those notices of motion, even up to this point, were still being ignored by Registrar Howe
55 during the time when Fiona was before him.

Secondly, when we filed the two notices of motion for a stay on the judgment of the order and we also filed

another notice of motion to revoke that order, it was ignored by Registrar Howe on 5 December. My wife, being nearly seven months pregnant and with three young kids and not very well, she just was not capable at that time to defend herself as a self-litigant, so she gave me Power of Attorney to take over the matter. I went before Registrar Howe on 14 December. In lieu of what Mr Koning stated, Registrar Howe suggested that the matter go before the Court of Appeal. We made enquiries during that, prior to 14 December with the Court of Appeal, and we had documentation ready to be filed. The advice we were given was that considering the common law matter had not concluded, there was no point in filing any documents in the Court of Appeal because the case in the common law court was still interlocutory.

We also spoke to various people within the Supreme Court about that, to try and get some clarification, and it seems to me that the same advice, or a suggestion was given that there's no point going to the Court of Appeal.

When I saw Registrar Howe on 14 December, Registrar Howe was - basically I said to him - I insisted that the two notices of motion that were ignored by him on 5 December be dealt with that day and I stated that I have - I'm getting unarguable evidence of fraudulent misrepresentation, unconscionable conduct, that the plaintiff conducted fraud, and I wanted the matter to go before a judge to have this heard. The barrister for that plaintiff insisted on having those notices of motion dismissed. I tried to object by saying, "Who benefits by such a dismissal, a multi-million dollar banking corporation or a suburban household?" Registrar Howe dismissed those two notices of motion.

I then went downstairs and filed documents in the Court of Appeal that afternoon about ten to five. I received a letter from the Registrar of the Court of Appeal who tells me it isn't the process. I can give you a copy of that hand written letter which was given to me by that Registrar. I have also given a copy of that to the plaintiffs solicitor, Garry Koning, who is here today. (Document handed up).

Further to that I had a quick chat with James J at about ten past five on that same day. I saw James J, showed him this letter you've sighted and he requested that I go back and see him at about 10 o'clock the following day, which I did.

Again, acting as a self-litigant on behalf of the defendant, I was still seeking clarification or trying to actually find a way to move forward in this matter. I said to James J that, "I want to get a stay put on that notice of motion, to put a stay on it and have it revoked on the basis that I have clear and unarguable evidence to prove that Hidden J had erred in his judgment", which was also stated by Fiona Cristian, the defendant, to Registrar

5 Howe on 5 December. James J said that he wasn't able to go forward without the plaintiff in the room. I agreed and accepted that was the case and I understood that I needed to then file steps to have the plaintiff in the court room before a judge, in this case yourself, your Honour, to reiterate the fact that Hidden J has erred in his judgment.

10 I have evidence here to present to you to validate that the decision as stated in the affidavit I just provided you, he was pressured or possibly coerced by the barrister for that judgment.

15 I seek the order today either on the basis that, firstly, you sight the evidence I have in my keeping for you, to fully comprehend the argument I have here and to allow us to have that order stayed and that order revoked. We want the matter to be fully dealt with in the Supreme Court. As to this point, we feel terribly let down by the Supreme Court. We feel as a family this family hasn't been protected by the Supreme Court by basic equity and justice and I come before you to provide us with the opportunity as Australian citizens and taxpayers of this country for more than 20 years, that I have the opportunity to defend the defendant and have this contract proven to be null and void, non-existent.

25 FOR JUDGMENT SEE SEPARATE TRANSCRIPT

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