IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

No Special Consideration

A. No. 7/84

221

Parties' names not to be published.

BETWEEN DAVID JOHN MOAT of Hastings, Salesman and ELIZABETH ANNE MOAT of Hastings, Married Woman

PLAINTIFFS

A N D SANDRA MARIE SNEE of Hastings, Married Woman

DEFENDANT

Hearing : 24th February 1984

Counsel : P.J. Headifen for Plaintiffs
D.N. Williams for Defendant

Judgment : 24th February 1984

ORAL JUDGMENT OF CHILWELL J.

On the 16th February 1984 I made an order in chambers granting an injunction to the plaintiffs Mr. and Mrs. Moat against the defendant Mrs. Snee in the following terms :-

> "1. THAT until further Order an interim injunction do issue against the Defendant her servants, agents or licencees to prevent them from taking any steps or any action which would have the effect of interferring with the Plaintiff's rights pursuant to a certain Agreement for Sale and Purchase dated the 29th day of November 1983, and, in particular from :

(a) By any act or omission causing or permitting to be caused any damage to the property at 16 Christie Crescent, Havelock North, and

(b) Remaining in occupation of the said property,"

I also reserved the question of costs and reserved leave to Mrs. Snee to move to set aside the Order.

The application for an interim injunction was filed within the framework of a writ and statement of claim filed on the 15th February wherein Mr. and Mrs. Moat were alleged to be the purchasers under an agreement for sale and purchase of the property in question. There is annexed to the statement of claim an agreement for sale and purchase dated 29th November 1983. It is common ground that it was signed by Mrs. Snee as vendor and by Mr. and Mrs. Moat as purchasers. The stated purchase price is $28,000 including $500 chattels. Possession was agreed to be given and taken on the 9th January 1984.

The statement of claim goes on to allege that on the 20th December 1983 the solicitors for Mr. and Mrs. Moat tendered the usual memorandum of transfer to Mrs. Snee's solicitor. Then on the 12th January 1984 the deposit of $1,000 stipulated for was paid and appears to have been accepted. Next the statement of claim alleges that on the 9th January 1984, that is the agreed date for settlement, that Mr. and Mrs. Moat were in a position to settle and advised accordingly. However, they were informed by Mrs. Snee's solicitor that he had received

instructions not to settle. Following that advice the appropriate settlement notice was given. The next allegation is that Mr. and Mrs. Moat were ready, willing and able to settle on the 9th January and still are. Accordingly the statement of claim seeks an order for specific performance of the contract and other incidental relief.

On the affidavits which have been filed as at this moment the Court is justified in taking a prima facie view that Mr. and Mrs. Moat were ready, willing and able to settle, that they still are and that if tender of the purchase price was not made then the situation is such that they are probably excused from such tender. The Judge who ultimately tries the action for specific performance will not, of course, take any notice of that prima facie finding of fact because it cannot bind him in any way whatever and there may be a residual argument on the technical question of tender. The reason why Mrs. Snee refused to settle is that she simply wants nothing further to do with the contract.

On the 31st January 1984 Mr. and Mrs. Moat's solicitor received a telephone message from Mrs. Snee's solicitor which, as recorded by the clerk or secretary in question who took the message, reads :-

> "T/T Kennedy - she is coming in to see
> him Wed. a.m.
> She has threatened to burn the house."

and again, on 1st February 1984, a similar message was recorded by telephone in the office of Mr. and Mrs. Moat's solicitor :-

> "Roger Kennedy - not selling. If she has to give up possession she will burn the house down."

In view of that somewhat extreme attitude on the part of Mrs. Snee the solicitors for Mr. and Mrs. Moat made an urgent application to the Court by way of ex parte motion for an interim injunction. One is always concerned in the case of ex parte motions, which involve hearing one side only, that there is obviously a breach of the rule of natural justice contained in the maxim audi alteram partem. The rules of Court do provide for dealing with extraordinary situations and matters of urgency without hearing the party affected. Those rules are set out from Rule 399 onwards. It is necessary in all cases of unilateral applications to the Court that the notice of motion, that is to say, the application, is certified by counsel moving. That certificate is regarded by the Court as a guarantee by counsel that full disclosure of all relevant material has been made and that the Court is advised of any defence which the moving party reasonably suspects may be raised. Hence, great reliance is placed by the Court on the certificate.

There are differences in practice amongst Judges of the High Court with regard to ex parte applications and in particular with regard to those for interim injunctions. I have issued two judgments, one of which is Cross v Peni

[1978] N.Z. Current Law 516, in which I have drawn attention to the necessity to serve the party against whom relief is sought even if service is of short notice and not within the time limits prescribed by the rules. That is because the fundamental principle of audi alteram partem has to be kept constantly in mind and Rule 468(d) is enunciated to alert counsel and the Court to the need to keep that principle in mind. The particular rule requires the giving of notice unless by reason of the exigency of the case notice ought not to be given and, in that event, such notice ought to be given as the exigency of the case will allow.

Hence, when Mr. von Dadelszen appeared before me on the ex parte motion I expressed my concern about the fact that it was not proposed to give notice to Mrs. Snee or her solicitor. I was referred to a paragraph in the affidavit of the solicitor acting for Mr. and Mrs. Moat, Mr. Pierce, where he referred to having received the telephone messages and having discussed the matter with Mrs. Snee's solicitor, Mr. Kennedy. Towards the end of the particular paragraph he said :-

> "Mr. Kennedy also indicated to me that if proceedings were issued against the Defendant it was the Defendant's intention to set fire to the property and destroy it. He indicated to me that he considered that the threat was one which should be taken seriously." (para. 13)

Mr. Von Dadelszen discussed with me the question of damages and whether or not damages would be an adequate

remedy if the house were burned down. He submitted that Mr. and Mrs. Moat were entitled to the benefit of their contract, that if I were to think that damages would suffice the evidence then before the Court indicated that Mrs. Snee would be financially unable to meet the damages, particularly in view of the fact that if she burned the house down the insurance company would, of course, refuse to pay. The memorandum which Mr. von Dadelszen had supplied for my consideration dealt with the background to the application satisfactorily and it disclosed that an allegation would be made against Mr. and Mrs. Moat to the effect that the contract had been extracted by duress or undue influence.

In the result I was persuaded that this was a case where an interim injunction should issue without prior notification and I was motivated particularly by the passage in the affidavit of Mr. Pierce to which I have referred. In the course of announcing the making of the order I placed a Minute on the file that an arguable case for relief had been established. I further indicated in that Minute that if Mrs. Snee were to apply pursuant to leave reserved I would hear the matter on 24 hours' notice. Mr. von Dadelszen undertook so to advise Mr. Kennedy and did so.

It is not surprising therefore that the Court now has before it a motion on behalf of Mrs. Snee for an order rescinding the interim injunction upon the grounds that Mrs. Snee will not take any steps or any action which

would have the effect of interfering with the alleged rights of Mr. and Mrs. Moat under the alleged agreement and upon further grounds appearing in the statement of defence and affidavits filed in support of the present motion.

Rule 426 of the Code of Civil Procedure provides that "-

> "Any party or person against whom an order has been made ex parte may at any time move to vary or rescind the order."

On any such application the Court has two functions usually to perform. The first is to consider whether the injunction ought to have been made in the first place. Many arguments are raised in cases but the most usual one is that counsel for the party obtaining the relief has not made full and complete discovery of all relevant matters predicated by the guarantee to do so given under his formal certificate. The second is to deal with the whole issue of interim injunction on the merits afresh. Consequently, if the Court gets beyond the first issue into the merits the person against whom the relief has originally been granted is in no worse position than would otherwise be the case because the Court has to consider the matter entirely afresh.

As might have been anticipated from what was disclosed to the Court the statement of defence filed on the 22nd February,apart from challenging the contract

formation on technical grounds, raises substantive affirmative defences to the following effect :-

(a) Mrs. Snee's signature was obtained by duress and/or undue influence.

(b) If there is a contract it amounts to an unconscionable bargain.

(c) When she signed the document Mrs. Snee was so drunk as to not know what she was doing.

I think, having regard to modern authority, that each of those affirmative defences goes not merely to the question of the exercise by the Court of its discretion when granting an order for specific performance but also to the very validity of the contract. The authority to which Mr. Williams referred of O'Connor v Hart appears to support the view just propounded. It is some time since I read the decision but I have been able to refresh my memory from the discussion contained in [1983] Recent Law 388.

The affidavits filed by and on behalf of Mrs. Snee are designed to support the allegations in the statement of defence. For example, Mrs. Snee states that she was badgered by Mr. Moat and his father into signing, that she had been heavily drinking at the time and that she signed the document in order to get rid of them. She seems not at all contrite about burning the house down. In paragraph 7 of her affidavit she states without even an apparent written

blush :-

> "I confirm that I have threatened to burn the house down if I have to give up possession. Although this threat when it was made was serious and I had every intention of actioning it, whilst I remain in possession there is no possibility of my doing this. It would be against my interests to burn the house down whilst I am living in it as I have nowhere to go once the house is gone."

Dr. Boston, a medical practitioner who attends Mrs. Snee, has stated in an affidavit that she has a dependency on alcohol, that there have been occasions when under the influence of alcohol she has not seemed to be completely rational and in particular he said :-

> "I understand the Defendant consumes up to five flagons of beer daily. This is a large amount of alcohol. The effect of regular consumption of large amounts of alcohol are loss of memory and cerebral damage. In the Defendant's case it probably leads to the inability to think normally and she probably has a difficulty in acting rationally."

Her daughter, Mrs. Sandra Anderson, corroborates that version. She speaks of her mother continually living in a dream world with no sense of reality and refers to the fact that she has a psychiatric history having previously been a patient in two psychiatric hospitals.

Miss Bronwyne Snee, a daughter, also corroborates the situation. She has deposed that her mother drinks every day and all day, that the house is littered with flagons and in her opinion the consumption of alcohol

blurs her mother's thinking to such an extent that she knows not what she is doing. There are passages in Mrs. Snee's own affidavit which support what the children say. There is one passage in the affidavit which I will take out of order now, but which will become relevant later, in which she says :-

> "I confirm that the house at 16 Christie Crescent is very special to me in that it contains the memory of my late husband who died on the 23rd of August 1981 and that I believe his soul is still in the house." (para. 5)

As to that, her solicitor Mr. Kennedy deposed that on the 17th of this month Mrs. Snee told him that she had not left her lounge since her husband's death when her husband's casket was placed there prior to his funeral. He then deposed :-

> "She indicated that if she had to move out of the house the house would not be left standing and that the memory of her husband and his soul would go with her. She said that she would blow the house up if she had to give up possession." (para. 20)

Mr. Kennedy refers to the telephone messages left for Mr. Pierce and his telephone discussions with Mr. Pierce. There is a conflict between these two gentlemen. Mr. Kennedy deposes that he does not recall advising Mr. Pierce that if proceedings were issued it was Mrs. Snee's intention to set fire to the property and destroy it. He advances the opinion that Mr. Pierce places a wrongful interpretation upon his indication. The threat, according to Mr. Kennedy, has always been related to the actual

compulsion to give up possession.

Finally, in support of Mrs. Snee's present application Mr. Stone, a registered valuer, provided an affidavit filed this morning in which he describes the property. The salient aspects of the affidavit are that the Government valuation of the property as at 1st July 1981 was $33,000. That does not, of course, include chattels. Then he places his own value on the property as at 29th November 1983, having regard to its current run down condition, at $45,500 including $500 for chattels of the type which one would normally leave in a house and which are normally regarded as part of the house. He goes on to advance the opinion that if further work is done on the property it would fetch on the open market today $56,000. The cost of the work would, in his opinion, vary between $6,000 and $9,000 depending upon whether the purchasers do the work or get tradesmen to do it.

There have been a number of affidavits filed in opposition. Mr. Moat deals at some length with a substantial period of negotiation with Mrs. Snee, with other contracts that she signed and, with regard to the present contract, with the way in which it was negotiated. He absolutely denies any suggestion of stand-over tactics and that there was any suggestion that Mrs. Snee had had anything to drink or that she had a drinking problem. If one had only his affidavit without any affidavits in opposition it would appear to be a case of a person acting with entire propriety.

He is supported by his wife, and while I am on her affidavit I should mention that she refers to the fact that Mr. and Mrs. Moat have four children aged between 5 and 15, that they want this home for a family home which they are prepared to work on to bring up to livable standard and she deposes that the family find it distressing that they have not been able to obtain possession in terms of the contract.

Further corroboration comes from Mr. Moat's father, Mr. F.W. Moat. Again, if there were no affidavits in opposition one would say, from his affidavit, that the negotiations were handled in a proper fashion. Like his son, he detected no signs of alcoholism or drinking. He appears to be a bit knowledgeable about values and goes on to talk about carrying out remedial work. He considered that his son should have paid only $27,000 for the property.

Mrs. Pullen, who is Mrs. Moat's mother, confirms that she was there on the day when the contract was signed and Mrs. Snee appeared to be in a jovial mood and perfectly normal; also unaffected by alcohol. Further corroboration is to be found in the affidavit of her husband Mr. Stanley Pullen.

Also, Mr. Pierce said that when he served the interim injunction at 2 pm on 16th February 1984 he detected no sign of drinking. So far as the conflict between him and Mr. Kennedy is concerned he deposes :-

> "I accept that Mr Kennedy may not have specifically stated that if proceedings were issued against the Defendant then it was the Defendant's intention to set fire to the property and destroy it. The discussion which I had with Mr Kennedy however left me with the strong impression that if further steps were taken to enforce the contract, then it was a strong possibility that the house would be destroyed by fire by Mrs. Snee. Accordingly, I believe that that was the 'indication' given to me by Mr Kennedy and further that the threat should be taken seriously." (para. 6)

Mr. von Dadelszen, who appeared as counsel, has now found it necessary to make an affidavit and accordingly does not appear as counsel today. It appears from his affidavit that he was consulted by Mrs. Snee about getting out of the contract. That was on the 9th January. When he began making enquiries he found, as is often the case these days, that Mr. Pierce of his firm was acting for Mr. and Mrs. Moat and so he properly acted no further. His period of retainer, if there was a retainer, was two days only. Although he has annexed to his affidavit a file note of his discussion with Mrs. Snee I take the view that that conversation is privileged and I ought therefore to ignore it and I do so.

While dealing with this affidavit I should mention the following passage, the relevance of which will become apparent in a moment :-

> "At the time the Interim Injunction application was filed I did not consider that my evidence would be helpful to either party, but Mr Williams, the Solicitor for the Defendant. advised me on the morning of 23 February 1984 that he considered that my evidence might well be relevant in view of the defences which Mrs. Snee was raising. Because

of that I believed that it was appropriate
that I should swear this affidavit." (para. 7)

I turn now to what really is the first question for determination by the Court and that is whether the injunction should be discharged on the ground that full disclosure was not made. The submission was that I should have been informed by Mr. von Dadelszen that he had been approached by Mrs. Snee in January and for a period of two days was, in effect, her solicitor. Mr. Williams in no way suggests that Mr. von Dadelszen acted in bad faith, and I am certainly not asked to determine the issue on that basis but I am invited to take the view that I may well have, myself, not given the weight to Mr. Pierce's statement about burning the house down if proceedings were issued if I had known of the fact that Mr. von Dadelszen had acted for Mrs. Snee and in particular if I had known what she had told him on the topic of duress and the advice given.

Mr. Headifen has really left it to me to decide this issue. He put certain viewpoints to me and his viewpoints will be reflected in what I have to say now about the matter. One thing is quite certain that if Mr. von Dadelszen had attempted to tell me what had transpired between him and Mrs. Snee I would have had to stop him because, unless he had Mrs. Snee's authority, he would have been giving me privileged information. The privilege is always that of the client and not of the solicitor. Hence, I would not have received from him the information which it is suggested, if received, might have altered my view.

It comes down to this, whether if I had been informed of the fact with regard to his involvement I would have taken a different course.

I am certain that I would not have taken a different course because I cannot really see that his involvement has any real relevance to the issue which is whether or not this particular property ought to be preserved while the legal battle between the parties is heard and determined. I think that Mr. von Dadelszen ought to have informed me. On the other hand his failure to do so is, in my view, excusable and in any event it would not have altered my decision at the time.

I now turn to the merits. The issue is whether, looking at the matter de novo, I ought to retain the orders. The well known principle with regard to interim injunctions is that laid down in the case of American Cyanamid Co. v Ethicon Ltd. [1975] 1 ALL E.R. 504. That is to say, is there a serious question to be tried? Once that has been established then the Court goes on to consider the balance of convenience in terms of the principles which Browne L.J. distilled from Lord Diplock's speech in the Cyanamid case in delivering his judgment in the Court of Appeal in Fellowes v Fisher [1975] 2 ALL E.R. 829.

I am not really concerned, as I see it, with the substantive action for specific performance. It has been proper, of course, for the issues to be defined as they have

and for the parties by affidavit to have crystalised what areas of fact are to be advanced at the trial of the main action. It would be entirely wrong for me to comment on the facts. If you look at the case from the viewpoint entirely of Mr. and Mrs. Moat, they would seem to be entitled to specific performance. On the other hand if you look entirely at the case for Mrs. Snee she raises what appears to be a relatively strong prima facie case for having the contract declared invalid or, at least, for resisting the equitable order of specific performance. I am indebted to counsel for the way in which they have reviewed that aspect of the matter.

Having said that, the issue is whether a serious case has been put forward for the preservation of the property pending the hearing of the action. That is what I referred to in my minute when I made mention of there being an arguable case. Here we have a woman who still, at this very moment, avers that she will commit the crime of arson if she is compelled to give up possession. Anyone who can calmly and coolly say that must be disturbed in some way.

Mr. Williams has submitted, in effect, that the application is ill conceived because, when the affidavits are put side by side and the telephone messages are put side by side Mr. Kennedy's evidence is to be preferred to that of Mr. Pierce, and, when one gets to that situation, the Court ought to find that the threat is a potential threat and will not arise until after the hearing and until the process of execution of an order for specific performance

followed by an order for possession is undertaken by the Sherriff. That is a long way off. It is his submission that there is nothing in the evidence to suggest that the property is in any danger at the moment.

In the event that I might take a different view he has referred me to the House of Lords decision of NWL Ltd v Woods [1979] 3 ALL E.R. 614. This was a trade union case. It was perfectly plain that granting the interim injunction in that case would have granted substantive relief. Hence, the House of Lords had to distinguish that type of case from the American Cyanamid type of case which, if memory serves me correctly, related to patent infringement. At page 625 Lord Diplock said of the American Cyanamid case that it :-

> "..... was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial."
>
> ....
>
> "Cases of this kind are exceptional, but when they do occur they bring into the balance of convenience an important additional element. In assessing whether what is compendiously called the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding one way rather than the other at a stage when the evidence is incomplete. On the one hand there is the risk that if the interlocutory injunction is refused but the plaintiff succeeds in establishing at the

trial his legal right for the protection of which the injunction had been sought he may in the meantime have suffered harm and inconvenience for which an award of money can provide no adequate recompense. On theother hand there is the risk that if the interlocutory injunction is granted but the plaintiff fails at the trial the defendant may in the meantime have suffered harm and inconvenience which is similarly irrecompensable. The nature and degree of harm and inconvenience that are likely to be sustained in these two events by the defendant and the plaintiff respectively in consequence of the grant or the refusal of the injunction are generally sufficiently disproportionate to bring down, by themselves, the balance on one side or the other; and this is what I understand to be the thrust of the decision of this House in American Cyanamid Co v Ethicon Ltd. Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other."

That is the very sort of thing that Browne L.J. had in mind in Fellowes v Fisher when he enunciated a certain set of principles which give the impression that one progresses from one point to another. He ended up with principle No. 7 :-

"'... in addition to the factors to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.'" (page 841)

It is my view that NWL Ltd. v Woods was just such a special case and I have expressed the view in trade union cases

that they require different treatment from cases in other fields of the law.

Seizing upon Lord Diplock's remarks Mr. Williams has invited me to consider the practical realities of this particular case. It is his earnest submission that to allow the injunction to remain, particularly that part which relates to occupation, will have results for Mrs. Snee which from her point of view ought to be regarded as horrendous. They involve the removal of her from her home with which she has a strong emotional link. It will involve her children losing a family base, albeit that all but one have left home. Her relocation is a matter of concern in view, particularly, of her alcoholic condition, the health problems created by such a condition, her inability to work and what appears to be an undiagnosed deep rooted emotional problem which has caused her to spend her life in her lounge with her husband's soul.

When one looks at the position of Mr. and Mrs. Moat by contrast, the submission is that they have an existing home, that they cannot advance the hardship considerations that Mrs. Snee can advance. There is no reason why they cannot remain in their existing home until this litigation is resolved. To that I would myself add the further factor that at least they appear to be unaffected by the ravages of alcohol and there is no suggestion that either of them are in need of psychiatric treatment.

There is no doubt whatever that a person in the position of Mrs. Snee, as a vendor in possession, is under a clear duty at law to look after the property properly. The cases even suggest that she is in possession as a trustee for the purchaser. That concept no doubt stems from the principle that a purchaser who has an unconditional contract of purchase becomes in equity the owner, and, in consequence, if the property is, for example, destroyed by fire in the absence of any provision in the contract to the contrary, he carries the risk. Of course, if Mrs. Snee deliberately burns the property down she would have to restore Mr. and Mrs. Moat's loss in terms of damages. There seems to be no doubt in my mind about that. As to the law with regard to the duties of a vendor in possession I refer to Stonham Vendor and Purchaser paragraph 1140 A.

Mr. Headifen has helped me considerably with closely reasoned written submissions. I think the crux of the matter comes down to the issue, whether the property is at risk under the occupation of Mrs. Snee until such time as the substantive action is determined. It is his contention that the evidence of the children of Mrs. Snee, of the doctor and that part of the evidence which the Court finds acceptable of the conversation between Mr. Pierce and Mr. Kennedy, all point to a woman who is likely to act irrationally at any given time. In so far as she purports to assure the Court that she will not burn the house down until physically forced out of possession the Court can have no faith in that assertion in the light of the facts as put forward by and on behalf of Mrs. Snee.

I have considered the principles laid down by Browne L.J. I am satisfied that damages would be an inadequate remedy if for the only reason that Mrs. Snee is not in a position to meet any damages if she does go ahead and commit arson. Apart from the fact that she will almost certainly finish up in jail she will not get any insurance and her present financial position is quite unsatisfactory.

Looking at it from the other point of view the damages that Mr. and Mrs. Moat might be called upon to pay if Mrs. Snee is forced to vacate now, then wins the action and goes back into her home, I think there is sufficient before the Court to justify the view that those damages could be met by Mr. and Mrs. Moat having regard to their financial position to the extent that it has been disclosed. But those are not the only considerations. There is the status quo consideration. That does favour Mr. and Mrs. Moat for the very good reason that they are the owners in equity and Mrs. Snee is obliged as a matter of law properly to look after the property for them, that is, of course, all on the assumption that Mr. and Mrs. Moat succeed in the action.

I regard this particular case as coming within the seventh principle laid down by Browne L.J. It is not within the category of NWL Ltd. v Woods because depriving Mrs. Snee of possession is not finally determining the rights and obligations of the parties under the agreement for sale and purchase. In some ways the case is a little similar to Fellowes v Fisher where the Court refused to grant

an injunction to prevent a solicitor from being engaged in his profession contrary to what appeared to be a rather restrictive restraint of trade clause. Although in that case the Court was able to bring its decision within the framework of the American Cyanamid decision it could equally as well have decided that it was a case having its own special characteristics because it is one thing to prevent a person from earning his living and it is another thing to protect his former employers from what he might deflect in the way of clients.

In the present case the Court is faced with a vendor in possession of a home which has been her home for a considerable period of time. It is a home to which she has an emotional attachment. Without deciding the factual matters which will ultimately have to be decided at the trial there is, in my view, a credible amount of evidence (untested as it might be) which points to Mrs. Snee being in a somewhat sad mental condition. I understand from the papers that she is a Maori. One can therefore appreciate the significance of the soul and one can begin to see the significance of her statement that she has remained in the lounge with that soul since her husband died and one can comprehend that a mind which is in that condition would prefer to see the soul go up in flames with the house.

I frankly do not consider that the plaintiffs' bargain, measured in any terms, can compare with the disruption to this defendant's incredible way of life and her mental obsession. I have come to the conclusion that justice

requires that she be left in possession. On the other hand she ought to know, if she does not already, the consequences of damaging the property, and, in so far as the Court can protect the position of Mr. and Mrs. Moat, it is my judgment that that part of the injunction requiring Mrs. Snee not to cause damage to the property should remain.

Accordingly the order made ex parte is varied by discharging paragraph 1(b), that is the paragraph reading :

"remaining in occupation of the said property"

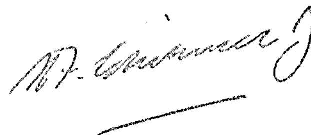
This, in my judgment, is a case which requires the utmost urgency in the determination of the substantive action. Although Rule 250B appears to require the filing of a motion the Court does have inherent jurisdiction, particularly on an application such as the present, to order that the action be tried without requiring it to be set down. I now make that order. I understand that Jeffries J. will be considering next week applications by other litigants under Rule 250B. I request that the file be placed before Jeffries J with a view to the Judge making a time for the trial and prescribing such conditions as he may think proper. I suggest, with respect to the Judge, that he confer with the Executive Judge in Auckland.

I meant to mention at the appropriate place in this judgment that I did not overlook the conflict in evidence between Mr. Kennedy and Mr. Pierce. I do not propose to

resolve that conflict because it may yet have a bearing on the ultimate result of the action. It suffices for me to say that, having regard to all the evidence that I have heard today, there would appear to be some room for the view taken by Mr. Pierce.

With regard to the question of costs I have been informed that Mrs. Snee has received emergency legal aid. In view of that I think that the question of costs ought to be reserved. Either party has leave to bring that question on before me on giving appropriate notice.

In the exercise of the Court's inherent jurisdiction, and, having regard to the fact that this is an application of an interim nature, I direct that there be no publication of the names of the parties or any witness. That will not preclude persons being referred to in a way which does not disclose their identity by the use of, say, letters of the alphabet.



Solicitors :

Plaintiffs	:	Bannister & von Dadelszen, Napier.
Defendant	:	Bate, Hallett & Partners, Hastings.