

1419

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

(3)

A.1346/82

N.L.R. *1098*

BETWEEN SAVA ERAKOVICH (a.k.a.
STEVE ERAKOVICH of Auckland
Carpenter

First Plaintiff

AND JENNIE-LYNNE ERAKOVICH
of Auckland, Married Woman

Second Plaintiff

AND STEVEN JAMES BIRD of
Auckland, Market Gardener

Defendant

Hearing: 24th August, 1984

Counsel: Bright for Plaintiffs
Grove for Defendant

ORAL JUDGMENT OF SINCLAIR, J.

This action proceeded as undefended after Mr Grove who appeared for the Defendant was given leave to withdraw. However, before he did withdraw he indicated to the Court that his client at least so far as the present claims are concerned acknowledged liability in respect of one loan of \$6,000 and a further one of \$11,800. He also indicated that his client would have to accept that the Plaintiffs were entitled to interest at the rate under the Judicature Act in respect of those two loans. That left two amounts in dispute, but one of those amounts had been dealt with in the District Court, that being an amount of \$560, for which an Order for restitution had been made during the course of a criminal hearing, but that Order for restitution is no bar to a further judgment in this Court in respect of the

same amount. In any event there is still the claim for interest on that amount, but it was acknowledged by the Plaintiffs that \$40 had been paid off the \$560 under the Order for restitution. The only other amount that was in issue was an amount of \$2100.

The evidence discloses that the Defendant Bird got in touch with the Plaintiffs in respect of a property that they owned in Wynyard Road and a genuine dealing was arranged in respect of that property. Thereafter the Defendant appears to have ingratiated himself with the Plaintiffs who accepted him as a man of honour, but instead he was apparently embarking on a course of conduct which was aimed at relieving the Plaintiffs of some of their assets.

An initial loan of \$6,000 was arranged or at least made to the Defendant on the representation that it was needed by him to purchase a piece of land to enable him to preserve the existence of his piggery as if he did not get it he would lose it to an adjoining person who ran a chicken farm. Accordingly the loan was made.

Later a loan of \$11,800 was made on the representation that it was needed to buy a piece of land at Papamoa for the Defendant's son so as to enable him to pick up a loan which would not be available until he could furnish title in respect of the whole land. The Plaintiffs advanced the money.

But where Bird comes out in his true colours is in respect of two alleged purchases of land in Brentwood Avenue, one in respect of No. 4 and the other in respect of

No. 26. Spurious agreements for sale and purchase were prepared by Bird and I am satisfied that neither owner registered at the time of the agreements ever intended to sell. I am further satisfied that the agreements are in fact forgeries. In respect of one a payment of \$2,100 was made to the Defendant on the basis that he had paid a deposit and certain legal fees, whereas in fact none of that, I am satisfied, had ever been paid. In respect of the other purchase he received a sum of \$560 on the basis that it was money which had been paid out by him for legal fees on behalf of the Plaintiffs. All of the moneys found their way, or at least on the evidence have found their way into the Defendant's possession and he has had the benefit of all of it for himself.

In the circumstances there has been a conversion of the moneys and the Plaintiffs, having made demand, are entitled to the return of it. However, the \$560 was but a loan made by the male Plaintiff and with interest on the outstanding amount there is now due \$649.04. There will be judgment in favour of the male Plaintiff in respect of that amount.

In respect of all of the other amounts there will be a joint judgment in respect of the capital sums and interest calculated to date pursuant to the Judicature Act from the date of the advances down to this date in a total sum of \$25,312.48.

In addition the Plaintiffs are entitled to costs which in the circumstances I fix at \$1250 plus all necessary disbursements and the Defendant is ordered to pay witnesses' expenses as fixed by the Registrar.

In case there should be any question raised afterwards in relation to the calculations which have resulted in the judgment being given for the aforesaid amounts, I simply state that I have relied upon the schedule of claims and interest as submitted to me by counsel for the Plaintiffs.

D. D. King

SOLICITORS:

Johnston Prichard Fee & Partners, Auckland for Plaintiffs
Anthony Grove & Darlow, Auckland for Defendant

