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BETWEEN MALCOLM HOWARD GIBSON  
of Christchurch, company  
director, and CHRISTINE  
MAY GIBSON of Christchurch,  
sales representative  
Plaintiffs

A N D DEALER DISCOUNTING LIMITED  
a duly incorporated company  
having its registered office  
in Christchurch and carrying  
on business there and  
elsewhere as a moneylender  
First Defendant

A N D HAROLD THOMAS DEAN of  
Christchurch, company director  
Second Defendant

A N D LESLIE DUNCAN of Darfield,  
repossession agent  
Third Defendant

Hearing: 7 and 8 March 1984

Counsel: K.N. Hampton for Plaintiff (Mrs Gibson)  
K.J. Jones for First and Second Defendants  
G.S. Brockett and M.P. Hundley for Third Defendant  
R.A. MacDuff (Given leave to withdraw)

Ruling: 8 March 1984

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ORAL RULING OF WHITE J.

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I propose to deal with this application for non-suit briefly, having had the opportunity of considering the submissions that I heard yesterday.

In considering the application I am, of course, now concerned with Mrs Gibson only. Broadly put, her evidence was that she was not a party to the fraud and was unaware of it until it was revealed on the first of these occasions which are relevant in these proceedings. Accordingly, the matters revealed at the first interview must be considered by me on the evidence at that stage and, in that light, in relation to the effect on her. On her evidence, pressure of the circumstances upon her as a wife was clearly present, having regard to the facts revealed

which proclaimed financial ruin and the likelihood of prosecution for serious fraudulent conduct by her husband if the situation could not be resolved.

The evidence was that the implications of Mr Gibson's conduct were brought home to Mrs Gibson on that first day by Mr Dean and Mr Duncan, as was inevitably likely, having regard to the circumstances. Those circumstances were not and could not be otherwise than a weighty consideration affecting her conduct.

The principles to which Mr Hampton has referred of which notice had already been given in the Memorandum of Counsel at an earlier stage in the proceedings are set out in the cases of Seear v. Cohen (1881) 45 L.T. 589 at 590 and Mutual Finance Ltd. v. John Wetton & Sons Ltd. [1937] 2 K.B. 389 at 395 per Porter J. They are in my view applicable to the Plaintiff, Mrs Gibson, and accordingly the question is whether there is evidence which the Court must consider in deciding whether she entered into the arrangements under pressure justifying a finding in her favour in respect of one or more of the causes of action pleaded. As to legal advice, again, in my opinion, the question which is referred to in the Memorandum is whether there is evidence to be considered in determining whether in the circumstances the Plaintiff, Mrs Gibson, should be held to be precluded from alleging duress or pressure of a kind on which she relies.

As to the affidavit evidence, I propose to ignore it as far as the non-suit application is concerned. In considering the circumstances as a whole in determining the causes of action on all the evidence available to me whether the affidavit evidence should be considered may be raised again.

To succeed on an application for non-suit a defendant must be able to demonstrate that there is no evidence before the Court or no sufficient evidence, as that has been

explained in the cases. In my view, having regard to what I have already said, there is evidence to consider before this Court and accordingly the application for non-suit must fail. I rule accordingly.

*J. White*  
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