

X

NOT
RECOMMENDED

CP 184/86

1019

BETWEEN

KARL BRUCE JOHNSTON
of Rotorua

Plaintiff

AND

GENERAL FINANCE &
ACCEPTANCE LIMITED

First Defendant

AND

PRUDENTIAL
ASSURANCE COMPANY
LIMITED

Second Defendant

Hearing &
Judgment

18 August 1989

Counsel

R.G. Ronayne for Plaintiff
J.N. Briscoe for First Defendant

ORAL JUDGMENT OF ANDERSON J.

This is an application by the first defendant to strike out the plaintiff's statement of claim and for ancillary orders, the ground for which is inordinate and inexplicable delay on the part of the plaintiff in pursuing this long-standing claim.

The first defendant also seeks an order that funds held in the trust account of O'Sullivan Clemens Briscoe & Hughes be paid out to the first defendant, an order that the plaintiff allow the defendant to uplift the chattels secured by the first defendant's debenture, and an order for costs.

This matter has been before me on two previous occasions, 21 March 1988 and 16 November 1988. I am bound to say I am losing patience with Mr Johnston who has received indulgences from this Court and persists in adopting an immature and unreasonable attitude. I make those observations well aware of the difficulties he has had with legal advisors excluding, of course, his present solicitors and counsel. Whatever his complaints may be in relation to his previous legal advisors I am past the point of indulging him to the extent of allowing that collateral issue to impede the disposition of this claim which is now out of all proportion to its true significance.

The first defendant is a large commercial institution with no indications whatever that it would not be able to reimburse the plaintiff in respect of the cost of the chattels sold should the plaintiff ultimately succeed. That factor, together with the clear necessity for stimulating progress in this proceeding, leads me to order as I now do that all funds held in the trust account of O'Sullivan Clemens Briscoe & Hughes, being funds received from the sale of the bus and trailer featuring in this dispute, be paid out to the first defendant. Should the plaintiff ultimately succeed, a like sum together with any relevant interest, would, of course, have to be reimbursed but there is nothing to suggest the first defendant would have the slightest difficulty in meeting that small demand on its fiscal resources.

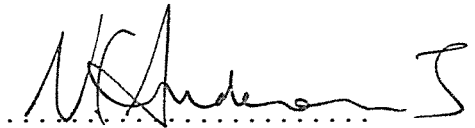
I reserve all other applications to be dealt with along with any ancillary matters during the week commencing 9 October 1989 at a time and date to be fixed by the Registrar. I shall be sitting in Rotorua during that week and I will deal with this matter personally to avoid more waste of judicial time in this case.

The first defendant may wish to consider, for example, an application for a preservation order together with an order for sale of the relevant chattels and the holding of the proceeds by the Court. I have noted previously that these chattels are depreciating with time and there are firm indications for considering a preservation order. The effect of my judgment of 16 November 1988 was to rescind the interlocutory injunction granted almost three years ago with the result that the first defendant's claimed contractual rights of entry and possession were left uninhibited by a Court order. The plaintiff may well be in breach of these contractual rights at present. Such breach may be a basis for considering some form of injunction as an alternative to a preservation order. In any event there is the possibility, and I put the matter no higher than this at present, that the plaintiff may be in contempt of Court in respect of certain orders relating to inspection made previously by this Court. Naturally, I make no finding in that regard at this stage but with Mr Johnston present I think it appropriate to get across to him the fact that the Court will not be

trifled with on the justification of whatever valid dispute he may have with previous legal advisors. A realistic mature attitude is required here and if it had been present earlier legal costs are unlikely to have amounted to the extent they have. I have little sympathy for a person who complains of legal costs which seem to have been brought in large measure on his own head by himself. There are people awaiting trial in this Court in matters affecting their liberty. There are people with civil disputes no less urgent than Mr Johnston's and I have much concern that his attitude may be delaying justice to other people as well as in relation to himself and the defendants.

The question of costs on today's application is reserved but as an aide memoir I note that prima facie the first defendant would seem entitled to costs.

The matter is adjourned in the terms recorded herein.



Solicitors for the Plaintiff

Morgan-Coakle Ryan & Bierre
Auckland

Solicitors for the First
Defendant

O'Sullivan Clemens Briscoe
& Hughes
Rotorua