

NZLR

24/10

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

LOW
PRIORITY

CP 184/86

BETWEEN KARL BRUCE JOHNSTON
of Rotorua
Plaintiff

1496

AND GENERAL FINANCE &
ACCEPTANCE LIMITED
First Defendant

AND PRUDENTIAL
ASSURANCE COMPANY
LIMITED
Second Defendant

Hearing &
Judgment

10 October 1989

Counsel

Miss A.C. Wills for Plaintiff
Mr J. Briscoe for First and Second Deft.

ORAL JUDGMENT OF ANDERSON J.

On 14 July 1989 the first defendant filed an application to strike out the statement of claim herein for orders for the payment out of monies. On 18 August 1989, I made certain orders in terms of an oral judgment later recorded and appearing on the file herein and reserved the particular issue of the striking out of the statement of claim. I noted on page 5 of that oral judgment that the outstanding applications and ancillary matters would be dealt with during this week at a time and date to be fixed by the Registrar and I particularly noted that the matter was to be brought before me to avoid more waste of judicial time in this case. I had cause to indicate declining

sympathy for the plaintiff's intransigence pointing out that there are people awaiting trial in this Court on matters affecting their liberty and persons involved in civil disputes no less urgent than Mr Johnston's. I noted that his attitude might be delaying justice to other people and that I had little sympathy for him..

At a callover subsequent to that judgment the outstanding matters were set down for hearing today. Mr Johnston has not presented at Court. Miss Wills has appeared on his behalf but for the limited purpose of seeking the Court's leave for her and her instructing solicitor to withdraw from this proceeding. The basis of that application is that neither she nor her instructing solicitor can obtain from Mr Johnston instructions which they could properly act upon..

I am familiar with the history of this matter and do not hesitate to grant leave to counsel and her instructing solicitor in terms of their application, having been advised that the plaintiff would be aware of today's hearing and having noted in any event the remarks I made on 18 August when Mr Johnston was present in Court.

After granting leave to counsel and her instructing solicitor I caused the case to be called in the foyer of the Court and, not unexpectedly, Mr Johnston is not present. The matter has now proceeded in default of appearance. Mr

Briscoe's submissions were understandably short because he has appeared in Court on this matter on many occasions as the record shows, and as I recall. He is also aware, of course, that I am familiar with the file having made rulings on it on at least three previous occasions.

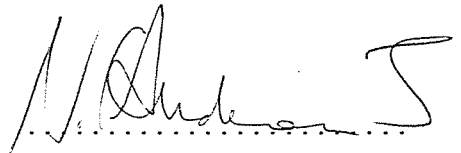
Mr Briscoe submits that in addition to the evidence formally supplied by way of affidavit in support of the application, Mr Johnston has an intransigent attitude to orders properly sought by the defendants from time to time and indications given by this Court with increasing degrees of firmness. I observe in addition that these proceedings were issued in 1986 and alleged defaults in respect of an instrument by way of security dated 30 December 1985. The plaintiff obtained an ex parte injunction originally and having met the defendant's initial and natural attempts to have recourse to the goods secured by that instrument with an application whereon the defendants had no opportunity to be heard then appeared content to sit and hold the line rather than diligently pursue his proceedings.

The Courts are always reluctant to strike out proceedings thereby depriving citizens of recourse to legal remedies but proceedings once set in train generate concern and expense for all parties not least the defendants. In this case the plaintiff has muddled on at best and at worst has simply closed his mind to the prospect of these proceedings being finally resolved. In the process

injustice has been caused to the defendants and in a general sense there has been the prospect of injustice to those who work conscientiously towards the disposal of their litigation.

I will not allow the plaintiff further to impede the proper administration of justice in this Court for whatever oblique or obscure motives he may now have. One may perhaps only speculate at this but one may be certain, as I am from my knowledge of this file, that the plaintiff does not have a bona fide desire to bring these proceedings to a conclusion.

I therefore make an order striking out the statement of claim. I reserve the issue of costs. In relation to the defendants, without attempting to pre-empt that issue I record for convenience that an order for costs against the plaintiff may be a merely academic gesture. In short there is an order for striking out with costs reserved.



Solicitors for the Plaintiff:

East Brewster
Rotorua

Solicitors for the Defendants

O'Sullivan Clemens Briscoe
& Hughes
Rotorua