

IN THE HIGH COURT OF NEW ZEALAND ^{30/8} C.P. NO: 106/91
WELLINGTON REGISTRY

BETWEEN CROWN FINANCE
LIMITED

Plaintiff

A N D DENNIS JOHN
WILLIAMS

Defendant

Hearing: 6 August 1991

Counsel: C E Ritchie for Plaintiff
J L Williams for Defendant

Judgment: 6 August 1991

JUDGMENT OF MASTER J H WILLIAMS QC

In this proceeding the plaintiff sues the defendant for \$18,184.49 plus interest and costs, that being the balance which Crown Finance says is still owing to it by Mr Williams under a hire purchase agreement.

The position is that on 5 December 1987 Mr Williams as purchaser entered into a hire purchase contract with a firm described as Prestige Caravans for the purchase by him of a 1983 Oxford caravan and extras for \$24,500. \$7,000 was paid in cash and the balance was payable over 48 months at \$692.04 per month. The balance was calculated by adding to the price of the caravan \$336 for insurance on the caravan itself and a sum of \$1,284.19 described in the hire purchase contract as "PPI insurance, Crown dealer". There appears to be nothing in the hire purchase contract compelling Mr Williams to take out the PPI insurance

from which one must infer that the effecting of that payment protection insurance was optional.

In the personal details contained in the contract Mr Williams or some person on his behalf has described his occupation as painter and decorator and under the box headed "Name of Employer" appears the word "Self" followed by "How long? 10 years". Prestige Caravans has signed the contract through one G A Hood and both signatures, Mr Williams' and that of G A Hood, are witnessed by another person. Neither G A Hood nor the other person have made an affidavit in this matter. The hire purchase contract provides for all instalments to be paid to Crown Finance and contains a GST registration number for use when the vendor is Crown Finance. Clause 21 of the agreement entitles Prestige Caravans "at law or in equity to assign its right, title and interest in the vehicle or under this agreement at any time" and the definition of vendor is extended to include the assignee. The contract contains a printed form of assignment in the following terms:

"The Vendor named and described in the within written agreement DOETH HEREBY ASSIGN TRANSFER TO SET OVER by way of mortgage only to the Assignee as separate assignments

- (a) All the Vendor's right title claim, interest and demand whatsoever in to and under the within written Agreement ("the Agreement"); and,
- (b) All the Vendor's right title and property in and to the Vehicle described in the Agreement; and,
- (c) The benefit of all guarantees, indemnities, undertakings and other rights held by the Vendor under or in relation to the Agreement or the transaction evidenced thereby"

FOR THE PURPOSE of securing to the Assignee performance of the Vendor's covenants herein and the punctual payment and performance of all moneys and obligations owing by the Vendor to the Assignee on any account whatsoever."

It now appears that at the same time that the hire purchase contract was taken out Mr Williams signed a document issued by American Life Insurance Co and called Application for Payment Protection. The document reads:

"I wish to apply for Payment Protection Insurance under the terms and conditions of the Master Policy NZMP 5011 issued to Crown Finance Limited by American Life Insurance Company.

I acknowledge that I have received a copy of Master Policy NZMP 5016."

Associated with that document is another form headed Details of Applicant for Payment Protection and that too includes Mr Williams' personal particulars, including his occupation as painter and decorator. In the top right hand corner of that detailed form appears the note "5016, 24/3/88" but the form says that the effective date of insurance is 5/12/87.

Concerning all of that Mr Williams in his second affidavit says:

"At the time I agreed with Prestige Caravans to take out the policy I advised them that I was self employed. This can be confirmed by the notes made on the contract by that companies manager The policy was supposed to have covered me in the event that I became unemployed. The policy however excludes any payments to people who are self employed

In addition the policy, in the event of redundancy only covers a maximum of 6 monthly payments. This was not what I agreed to nor what I was told I was being insured for. The premium I believe was about \$1,000-00. I was very concerned about my ability to pay in the event of unemployment. There was no way I would have paid that sort of premium unless I was sure that in the event of my becoming unemployed I would not be covered in full until I resumed alternative employment. In effect the policy is simply an incredibly expensive life insurance policy."

The Payment Protection Master Policy exhibited to Mr Williams' affidavit bears the number NZMP 5011 and although for the purposes of this application it is not necessary to construe the ambit of that policy with any particularity, a perusal of it shows that the schedule headed "Unemployment Insurance Conditions" and the schedule headed "Redundancy" apply only to employed persons and not to the self-employed such as Mr Williams disclosed himself to be in the hire purchase contract. As noted, neither of the persons apparently associated with Prestige Caravans and the sale of the Oxford caravan to Mr Williams have given evidence in this matter.

It is clear from the balance of the evidence that Mr Williams fell into default under the hire purchase contract. A demand for payment was made of him on 30 August 1990. The demand not having been complied with, Crown Finance repossessed the caravan and sent Mr Williams the statutory advice on 21 September 1990 concerning his entitlement to recover the caravan. He failed to recover it and the plaintiff accordingly sold the caravan by tender for \$10,000 and on 15 November 1990 sent Mr Williams the statutory statement of account after sale showing that the sum remaining owing by him under the hire purchase contract, after crediting the sale price of the caravan but adding on the expenses of sale, amounted to the sum for which Crown Finance sues Mr Williams in this proceeding, \$18,184.49.

Mr Williams does not challenge any of that apart from the circumstances in which the hire purchase contract was executed, together with the payment protection application, and accordingly the Court is satisfied that the plaintiff has made out its claim to the standard required by Rule 136 and the cases decided under that Rule, other than in respect of the

collateral arrangements which Mr Williams raises in his affidavit. The question therefore is whether the matters to which he refers and which are uncontradicted give rise to any arguable defence available to him.

There are a number of matters which need to be borne in mind in that respect. The first is Mr Williams' description of the ambit of the policy to be effected to cover the payments. The hire purchase contract makes it clear that Prestige Caravans were aware that he was self-employed and had been self-employed for a considerable period and that fact is confirmed by Mr Williams' evidence and the payment application form. Secondly, it is clear from the master policy which is in evidence and which provides for its being signed by Crown Finance, together with the references to Crown Finance in the payment protection form and in the hire purchase contract itself, that Crown Finance was well aware of the terms of the payment protection policy which was being offered by the American Life Insurance Company. It follows that it is probable that the salespeople involved on behalf of Prestige Caravans would have been similarly aware. Even were that not the case it is this Court's view that by including the PPI insurance reference in the financial details and doubtless providing Prestige Caravans with the ability to calculate the premium payable for that insurance, the persons employed by Prestige Caravans became agents of American Life Insurance company and are therefore deemed to have notice of all matters material to the contract of insurance known to their representative. (Insurance Law Reform Act 1977 s.10.) It follows from that that American Life Insurance Company must have been aware from the time the payment protection insurance was effected that Mr Williams was self-employed and had been self-employed for a period and must have been similarly aware that the payment

protection insurance offered under its master policy would not extend to Mr Williams' mode of work.

Because of the operation of s.10 it must also have been aware of the ambit of the insurance which Mr Williams said in his evidence that he intended to effect.

Following on from that it is arguable in this Court's view that, having regard to the assignment provisions and other provisions of the hire purchase contract earlier referred to, Crown Finance was affected with the knowledge conveyed to Prestige Caravans by Mr Williams concerning his personal position and of course it knew of the ambit of master policy 5011. In those circumstances this Court is of the view that a defence may be arguably available to Mr Williams that American Life Insurance Company's deemed representative failed to effect insurance in accordance with Mr Williams' instruction and payment and thus exposed him, in the circumstances which occurred when he ran out of work, to his not being covered for the continuing hire purchase payments. Arguably that finding in this Court's view might extend to Crown Finance for the reasons already noted as to Crown Finance's involvement and the fact that it too, may therefore have been deemed to be the insurer's agent. On that basis, therefore, the Court reaches the view that Mr Williams has shown that he may have an arguable defence and accordingly the application for summary judgment requires to be dismissed.

The Court having reached that finding, there is no need to do more than mention briefly some other general matters. The first is that the payment protection application form refers to master policy NZMP 5016 not the master policy NZMP 5011 and the 5016 reference also appears in the payment application

form. If there is such a master policy NZMP 5016 it is not in evidence.

Secondly, Mr Williams challenges the quantum of the claim asserting that he has paid some \$4,000 more than appears in the evidence. He adduces no detail in support of that assertion and in this Court's view it was sufficiently rebutted by the affidavit in reply so that had the Court been satisfied on all other matters relating to the claim it would have felt no difficulty in concluding that the proof on quantum reached the required standard.

However, for the reasons earlier set out such is not the case and the Court's formal orders are therefore:

- (1) That the plaintiff's application for summary judgment against the defendant is dismissed both as to liability and as to quantum
- (2) The costs of the application to date are reserved. Hearing time including delivery of judgment 1 hour.
- (3) By consent the proceeding is transferred to the District Court at Wellington, counsel having agreed on that location.



Master J H Williams QC

Solicitors for plaintiff: C E Ritchie, Wellington

Solicitors for defendant: Sladden Cochrane & Co,
Wellington