

Weatherhead v Avram 12/8/02, Master Anne Gambrill, HC Auckland CP63-im02

Unsuccessful application for summary judgment - W claimed A refused to pay purchase price of a property after possession transferred as previously agreed - W claimed summary judgment for general damages was appropriate in this case - W claimed A had agreed to pay purchase price knowing full well that title could not be transferred immediately - W claimed correspondence between the parties made it clear that payment should be made when possession transferred - W argued the general rule is payment should be transferred with title however parties intentions should be taken into account in each particular contract - A claimed she had a clearly arguable case and that it was not appropriate for the court to deliver a summary judgment - A claimed she was entitled to have all relevant documents in registrable form to create the title before payment of purchase price - A argued the correspondence between the parties could not be construed to waive any contractual requirements.

Held, the nature of summary judgment is inappropriate to obtain an award for damages relating to stress derived from failure to settle - W had an obligation to deliver title upon settlement and if this was to be varied it should have been identified in the contract and should not have arisen out of correspondence - to obtain an award for compensatory damages W had to prove A's acts caused the damage occurring and W never did this - this matter is unsuitable for summary judgment - application dismissed