



[2002] QSC 036

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 137 of 2001

CAIRNS TAIPANS BASKETBALL PTY LTD

Applicant

and

CAIRNS SHELF CO NO.16 PTY LTD

Respondent

CAIRNS

..DATE 29/01/2002

JUDGMENT

HIS HONOUR: In this matter the applicant seeks to set aside a statutory demand. The respondent today has indicated that it would not oppose the application because it is conceded that there was a genuine dispute between the parties. The only question for me to determine is the question of the costs of the application.

The applicant seeks costs on the basis that the making of the demand was not justified and further, that the delay between receiving the applicant's application to set aside and the indication by the respondent conceding there was a genuine dispute has caused the applicant to prepare for the hearing.

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The circumstances in which the demand was made are such that it seemed inevitable that the statutory demand would be set aside. There is not established, in my view, any debt. The claim was based on rental of premises for which no rental had been agreed. The rental of the premises appeared to be related to a further agreement regarding the sponsorship of the basketball team and this is the substance in which the applicant alleges there was a genuine dispute between the parties.

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Counsel for the applicant also points to other deficiencies in his submissions, particularly the shortcomings in the affidavit in support of the demand. There is no need to canvass each of these matters, but significant amongst the shortcomings of that affidavit is the fact that there was no swearing to a belief as to the absence of any dispute.

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In all of the circumstances, the application has been successful, it was justified and the material indicates to me that the statutory demand should never have been made.

I will therefore order that it be set aside and I will further order that the respondent pay the applicant's costs of and incidental to this application.
