



Transcript of Proceedings

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Date 14/2/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

CHESTERMAN J

No 794 of 2002

RODERICK HAROLD SEYMOUR

Applicant

and

SIMON STEVEN JAMES NUTTALL and
DARELLE NUTTALL

First Respondent

and

PROACTIVE FINANCIAL SOLUTIONS
(ACT PTY LTD (ACN 066 074 913))

Second Respondent

BRISBANE

..DATE 05/02/2002

JUDGMENT

HIS HONOUR: I will make an order in terms of the draft which I have amended and will initial and I will give some brief reasons so there is a record of what has happened.

The applicants came before the Court yesterday seeking ex parte orders in the nature of an Anton Piller injunction. The relief claimed seemed to me wider than could be justified and I declined to proceed but suggested that the applicants refine the relief they sought and provide further evidence which would justify the making of the order.

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They have appeared again today by counsel with a proposed order limited in scope and supported by a further affidavit which, I think, makes it appropriate to grant the relief sought. In essence, the dispute is this; the applicants claim that they were partners with the respondents in a small business in a northern Brisbane suburb. The nature of the business was the retailing of seafood both fresh and cooked.

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A dispute has arisen between applicants and respondents. Mr Nuttall, who is a chartered accountant and was for a while the professional accounting adviser to the applicants, disputes and indeed denies that he was ever in partnership with the applicants.

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It is, I think, common ground that he paid about \$40,000 to the business but he claims that that was an advance by way of loan and not an injection of capital by which he became a

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partner. The business has failed, the applicants assert that Mr Nuttall has misapplied moneys from the business which has led to its demise. They wish to claim damages and an account of the partnership. A critical issue, of course, will be whether Mr Nuttall and/or the other respondents were ever partners.

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There is in evidence a copy of an agreement which on its face purports to show that the sum of \$40,000 was advanced by way of loan by Mr and Mrs Nuttall to the applicants Mr and Mrs Seymour. The rate of interest claimed, is to say the least, extravagant.

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The applicants deny ever having signed the agreement. They assert that it is a forgery and they suspect that it was created by Mr Nuttall on one of his computer in use at his business or at his home. There is some circumstantial evidence to support the suspicion.

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The existence and the genuineness of the document is a critical question. The applicants, through their solicitors, have on three occasions requested Mr Nuttall to produce the original of the agreement for inspection by a forensic document examiner. The requests have gone unanswered giving a sense of heightened unease to the applicants.

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What is now sought by way of the Anton Piller order is the Court's authority to the applicants and a computer expert to

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examine Mr Nuttall's and the other respondent's computers to see if they can find evidence that the document was created on his computer and on a date later than that which it bears.

There is a suspicion that were Mr Nuttall to be given notice of the application any trace of the document on his computers could be erased. The case is perhaps borderline. The Court, I apprehend, ought not to make orders of the Anton Piller kind except where there is a clear case for relief and where it appears that without the order critical evidence might be destroyed.

This is, as I say, a borderline case but I think the order is justified on the basis that the interference with the defendant's rights is limited and the evidence is critical to the action which the applicants have undertaken to commence as soon as possible.

For that reason I will make an order in terms of the draft which I have amended and initialled.
