



Transcript of Proceedings

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State Reporting Bureau

Date 18/4/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

HOLMES J

No S7812 of 2001

COMMISSIONER OF STAMP DUTIES

Plaintiff

and

AGENTI ARCHITECTS PTY LTD

First Defendant

and

TRANSWORLD COMMODITIES PTY LTD

Second Defendant

and

ROXANNE INVESTMENTS PTY LTD

Third Defendant

and

BRAKATHOS PLUS PTY LTD

Fourth Defendant

and

PEARL REACH PTY LTD

Fifth Defendant

and

BRISBANE CRUISE PORT PTY LTD

Sixth Defendant

10042002 T11/LM9 M/T 2/2002 (Holmes J)

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No S7813 of 2001

COMMISSIONER OF STAMP DUTIES

Plaintiff

and

BRISBANE CRUISE PORT PTY LTD

First Defendant

and

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BRISPORT PTY LTD

Second Defendant

BRISBANE

..DATE 10/04/2002

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JUDGMENT

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HER HONOUR: The applicant Commissioner of Stamp Duties in each of these matters seeks an order that the defences be struck out under rule 171 of the Uniform Civil Procedure Rules as disclosing no reasonable defence, and judgment pursuant to rule 292 of the rules, for the amount of \$256,765.20 with costs, on the basis that the defendants have no reasonable prospect of successfully defending the actions.

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Both actions concern stamp duty assessed on a share sales agreement in deed form. In action 7812 of 2001 the first, second, third, fourth and fifth defendants are alleged to have agreed to sell certain shares in Wood Sands Pty Ltd to the sixth defendant. In action number 7813 of 2001 the first defendant is alleged to have agreed to sell by the same deed shares in the same company to the second defendant.

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All this occurred against a background of the proposed development of a Brisbane cruise ship facility and the structuring of companies for that purpose.

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The deed was lodged for assessment and was duly assessed. Duty was not paid by the time prescribed and penalties for late payment were imposed leading to the amount claimed in the sum of \$256,765.20. By virtue of section 4B of the Stamp Act that amount is a statutory debt owing to the Crown. It is asserted in the claim that the Commissioner's assessment is conclusive in proceedings for a recovery.

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The defendants in each action have lodged identical defences. Those defences assert that the share sales agreement is in issue in another action in this Court, number S11510 of 1999. Mr Hoggett, who represented all defendants, pointed out in his oral submissions that the defence in that action asserts that the share sale agreement was not completed and he argued that to give judgment for stamp duty upon it would pre-empt that matter. But the mere existence of a pleading in another action cannot prevent the Court from proceeding in an existing action between different parties. In fact the validity of the share sales agreement is not even raised as an issue in the defence in this case.

The defences go on to assert that the defendants have obtained no benefit from the share sales agreement and that stamp duty was to be included in the cruise ship terminal project costs.

Mr Hoggett says there was an understanding or an arrangement with the State Government that stamp duty would not be paid until completion of the project and the defences go on to assert that for various reasons, which I might summarise as alleged skulduggery on the part of the Government and others, that never happened.

The difficulties here are that no specific agreement for postponement of payment is pleaded, much less is there any such agreement supported by evidence, and the greater

difficulty perhaps is that no objection was lodged to the assessment so that there came into existence for the purpose of recovery proceedings a conclusive assessment, on the authorities set out in Commissioner of Stamp Duties and Westley Management Services Pty Ltd 2001 QSC 176.

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Mr Hoggett asked for an extension of time to lodge an objection but that is not within the power of this Court on such an application.

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In sum, the defences, while they disclose certainly a good deal of dissatisfaction with the conduct of the State Government and other parties involved in the cruise port development, do not establish any defence to the Commissioner's claim.

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There is no reasonable defence disclosed. The defences are so clearly untenable they cannot possibly succeed and must be struck out. Nor have the defendants produced any material which would indicate that they have a reasonable prospect of success in their defence or indeed any prospect of success, and I am satisfied that there is no need for a trial of the action. The Commissioner is entitled to summary judgment in each case.

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HER HONOUR: I will make the orders as per the drafts provided which I will initial and place with the papers.

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