

State Reporting Bureau



Queensland Government
Department of Justice and Attorney-General

Transcript of Proceedings

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Court Reporting Bureau
Date 10/05/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

CULLINANE J

No Mackay S31 of 2000

CHERYL ANN CAMPBELL

Plaintiff

and

CSR LIMITED
ACN 000 001 276

First Defendant

and

CSR PLANE CREEK PTY LTD
ACN 009 657 041

Second Defendant

and

ZURICH AUSTRALIAN INSURANCE LIMITED
ACN 000 296 640

Third Party

TOWNSVILLE

..DATE 08/05/2002

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: For reasons which I think I have already made clear in the course of argument, I do not think that it is possible to accede to the application by the second defendant that leave be granted to withdraw certain admissions.

As was said, the evidence in support of the application which comes from a corporate counsel of the second defendant is not directed towards the relevant period. There is no evidence as to just how the admissions came to be made, but this is perhaps understandable, given the unusual circumstances in which these matters have arisen. But it is not necessary for me to say anything further about this.

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The solicitor for the applicant's second defendant has intimated that he may wish to pursue the matter further, having obtained further evidence on this subject. And I think, as I have already told the parties, that it would be more appropriate if this was dealt with before the Central Judge who will be presiding over the trial of the action on the week starting the 20th of May.

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I was the trial Judge when the matter came before the Court in Mackay after the problem had been averted to, and I indicated then that I would endeavour to take whatever steps were possible to have the matter come on for trial at the following sittings. It was indicated that third party proceedings might be taken, and I said that I would be prepared to entertain applications with a view to seeing whether it would be

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possible to fix a timetable which would enable the action and any third party proceedings to proceed.

However, it is apparent from the material that has been placed before me by the third party that there has not been adequate opportunity for the third party to fully investigate the matter.

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It would seem that there is a genuine dispute between the third party and the second defendant on the issue of indemnity, and when one considers the need to investigate the matter, presumably including taking the matter up with the solicitors who acted previously for both parties and also making general inquiries as to factual matters, and the need then to undertake discovery, I think it is unfortunately unrealistic to expect that the third party proceedings could be now got into a position to proceed with the trial.

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The order sought was that the third party be required to deliver a defence by the 16th of this month. That, of course, would be, I think, the last or the second last working day prior to the date upon which the trial has been set down to start. I think it highly probable that if this course was taken, the third party would be on that day seeking an adjournment, and that would involve substantial costs if it had also prepared for the contingency that the Court required the matter to proceed.

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I think in these circumstances it is not reasonable to require the third party to file and deliver the defence within the time sought.

The application will be adjourned to a date to be fixed, so far as the application for leave to withdraw the admissions is concerned. As I have indicated, that should come on if it is to come on again before the central Judge in Rockhampton who has the conduct of the trial.

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The application for an order that the third party deliver a defence by the 16th of May is dismissed.

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HIS HONOUR: The costs of the application will be reserved to the trial Judge.

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