



[2002] QSC 158

## Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

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State Reporting Bureau  
Date 13 / 5 / 2002

Application No 34 of 2002

MOUNTAIN VIEW FARMS PTY LTD

Applicant

and

IAN DAVID JESSUP as trustee of the  
Estate of GEORGE KEVIN WILSON  
(A bankrupt)

Respondent

CAIRNS

..DATE 03/05/2002

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: This is an application pursuant to section 127 of the Land Title Act for the removal of a caveat which was lodged by the trustee in bankruptcy of the estate of George Kevin Wilson.

Underpinning the lodgment of the caveat was an action commenced by the trustee in bankruptcy which action was determined against the trustee in the Federal Court, reasons for judgment of Justice Spender being handed down on 20th of March 2002.

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The application when filed was based on that determination however since that time an appeal has been lodged against Justice Spender's decision. The appeal has been lodged out of time but only by a few days. An application for an extension of time within which to appeal has now been made and given the history of the matter it is likely that the extension will be granted.

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As a consequence the proceedings which underpin the caveat are, in my view, still on foot and it would be quite inappropriate until the appeal has been determined to remove the caveat.

The interests of the applicant here are protected by the terms of the legislation which gives it an entitlement to damages if the caveat has been wrongfully lodged. Further to that, counsel on behalf of the trustee has given an undertaking that in the event of the result of appeal being adverse to the

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trustee the caveat will be removed forthwith.

In my view, the proper course is to allow the proceedings to be determined in the appropriate way and only then will there be any determination as to whether the caveat has been properly abolished.

I therefore dismiss the application.

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HIS HONOUR: On the question of costs, I propose to make no order for costs on the basis that the issue of this application on the 9th of April 2002 seemed to me to be precipitative given that the decision of Justice Spender was handed down only on the 20th of March 2002 and so its commencement was therefore well within the period for lodging the appeal. There will be no order as to costs.

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