



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MULLINS J

No 4747 of 2002

RE: RUTLETA PTY LTD

BRISBANE

..DATE 04/06/2002

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.

HER HONOUR: This is an application by a creditor of Rutleta Pty Ltd to reinstate the company. The company was deregistered for failure to lodge annual returns on 18 February 2002. The applicants obtained a judgment against the company on 13 February 2001 for the sum of \$16,896.98 and \$1,007 costs in the Maroochydore Magistrates Court.

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A creditor's statutory demand for payment of debt dated 17 December 2001 was served on or about that date on the company. A winding up application did not proceed thereafter when there was no compliance with the statutory demand as the applicants found out that the company had been deregistered.

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From the dealings which the applicants had with Mr David Barnes, the director of the company, they suspect that the company owned property and had assets which would be available to pay its debts. The applicants cannot themselves make the inquiries necessary to investigate those suspicions without the assistance of a person like a liquidator. The applicants therefore are grieved by the deregistration of the company as it has prevented their proceeding with the winding up of the company in order to endeavour recover payment of the debt which they are owed by the company.

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Mr Williams, the solicitor for the applicants, has been informed by other solicitors who have been chasing the

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company and Mr Barnes that Mr Barnes was declared bankrupt on 2 February 2002. The applicants have been unsuccessful in locating Mr Barnes for the purpose of serving him with this application for reinstatement.

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The application was served on ASIC. Attached to Mr Williams' affidavit filed by leave today is a copy of a letter to his firm from ASIC dated 31 May 2002 which indicates its requirements in relation to reinstatement of companies and makes reference to policy statement 83. The letter sets out that ASIC requires an undertaking to the Court to be given by the applicant for reinstatement to advise ASIC forthwith upon the conclusion of the litigation for which the reinstatement is sought. This is to enable ASIC to take appropriate steps to cancel the registration of the company.

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ASIC has not appeared on the application today but that was foreshadowed to Mr Williams by the officer of ASIC to whom he had been speaking. Mr Sheaffe of counsel who appears for the applicants has informed me from the Bar table that his solicitors and he are aware of other creditors who have an interest in the reinstatement of the company.

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It is therefore possible that it may not be the applicants themselves who proceed with the winding up of the company, if another creditor has an earlier application for winding up.

I have therefore amended the draft order provided to me by Mr Sheaffe in order to incorporate an undertaking which Mr Sheaffe informs me he has instructions to give on behalf of the solicitors for the applicants in the following terms: 10

Upon the undertaking of the applicants by their solicitors to forthwith take all necessary steps either to wind up Rutleta Pty Ltd or to facilitate the winding up of Rutleta Pty Ltd by another creditor; and 20

to forthwith notify ASIC if the steps to wind up Rutleta Pty Ltd are not taken or the winding up for good reason does not proceed.

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On the basis of that undertaking, which I have incorporated in the draft order, I am prepared to make an order that ASIC reinstate the registration of Rutleta Pty Ltd ACN 001 569 035.

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Mr Sheaffe had asked that I reinstate the company for the limited purpose of the winding up of the company and the appointment of a liquidator under section 601AH of the Corporations Act 2001. The only order which I can make is that ASIC reinstate the registration of the relevant company. If it is intended that it be reinstated for a limited purpose, that must be dealt with by appropriate undertakings. 50

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I do not consider it is appropriate to make an order for costs.

The order is as per the draft, amended by me and placed with the file.

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