



Transcript of Proceedings

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Date 18/7/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

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WHITE J

No 5540 of 2002

AZTEX CERAMICS PTY LTD
(ACN 076 673 633)

Plaintiff

and

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ALAN RAYMENT
(trading as Alray Electrics)

Defendant

AND

No 5541 of 2002

AZTEX CERAMICS PTY LTD
(ACN 076 673 633)

Plaintiff

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and

STEVEN COMERFORD
(trading as Comerford Engineering)

Defendant

BRISBANE

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.DATE 09/07/2002

REASONS

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: There are two applications to set aside statutory demands before the Court. They have been heard together. They arise out of substantially the same facts although there are some differences, but I propose to deal with them together in these brief reasons.

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The applicant company Aztex Ceramics Pty Ltd seeks to set aside statutory demands by Alan Rayment and Steven Comerford. They had both in the past been employed by the company and their statutory demands relate to what they contend are unmet payments for hours worked.

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The company conducted a labour hire business and subcontracted the services of the creditors. Those services were subcontracted to Pacific Dunlop and also to a business known as South Eastern Elastomers Pty Ltd which has been described as SEE in the proceedings.

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The creditors were paid for the work that they did for Pacific Dunlop. They also worked for SEE after they had finished their work at Pacific Dunlop. They contend that they have been either not remunerated or not completely remunerated for that latter category of work.

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The director of the company, Mr Norman Stone, says that that

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liability to pay for these additional hours is in dispute on the basis that they have already been paid by Aztex, or that it is the liability of SEE and not of Aztex to remunerate the creditors.

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One of the difficulties with this matter is that the statutory demand in each case annexed a bundle of hours said to have been worked on particular dates for Aztex without any further elaboration. The material would suggest that there is some real difficulty in working through to what each of these schedules refers. Mr Stone deposes in the affidavit relating to Mr Rayment's claim the following:

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"In respect of the defendant's claim for time worked for the plaintiff at Dandenong, liability is disputed as hours have already been paid by the plaintiff, or if it is proved that it has not been paid, the liability is one of SEE and not of the plaintiff. On each occasion the plaintiff engaged the defendant, it would always then separately invoice the labour hire charges incurred at Dandenong to SEE upon a weekly basis and obtain immediate reimbursement of the contract labour charges incurred. Throughout the plaintiff's subcontracting of the defendant, the defendant would provide weekly invoices with signed time sheets or clock records from the plaintiff's client directly to the plaintiff which would be paid immediately on the following Monday of each week. No authorised time sheets or clock records have been provided by the defendant to the plaintiff for the additional charges now claimed in the statutory demand notice."

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This, it is said, relates to the Pacific Dunlop claims. The creditors say that there were no time sheets kept in respect

of the work done for SEE because Mr Stone was mostly present when the work was performed and he did not require any invoices of time worked. Mr Rayment says that SEE did not have clock cards so that he could not produce that kind of an invoice as is referred to by Mr Stone.

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The creditors point to proceedings in Victoria whereby Aztex and SEE were in dispute about the payment of certain labour hire charges, and that related to both of these creditors and one other. So far as Mr Rayment is concerned, it relates to a period which is not the subject of the statutory demand. There is some overlap with the period during which Mr Comerford claims he was retained. There is on the material clear disputes about what the arrangements were between the creditors and SEE and Aztex in respect of these matters.

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In an application of this kind it is not easy to work through what is said to be the documentary material. It is, some of it, inconsistent; some of it is simply delphic. Otherwise, there are the oral terms which are deposed to by the creditors and by Mr Stone which are in conflict.

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Mr Favell, who appears on behalf of the creditors, has also conceded that there is a genuine dispute about \$3,360 of a

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claim relating to a tool box, and the amount which is said
to have been paid of \$2,000 which Mr Stone denies having paid.
Mr Favell wishes to have the demand increased by \$2,000 and
reduced by the amount of the tool box dispute.

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It seems to me that the material shows that there is a
genuine dispute between the parties which is not contrived
or vague. Both counsel have set out with great clarity the
principles to be applied in an application of this kind.
They are not in disagreement and there is no need to restate
them here.

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I am persuaded that the threshold required to meet the
setting aside of the statutory demand that there be a
genuine dispute has been met on this material.

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Accordingly, I grant the application to set aside the
statutory demand.

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HER HONOUR: Further order that the respondent pay the
applicants' costs of and incidental to the application, to
be assessed on the standard basis.

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