



Transcript of Proceedings

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Date 26/1/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No 6792 of 2001

GOLD RIBBON (ACCOUNTANTS) PTY LTD
(In Provisional Liquidation)
CAN 081 156 078

Plaintiff

and

GARY PETER MOSS

Defendant

BRISBANE

..DATE 11/07/2002

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: I will proceed on the basis that this matter has
been back before me a couple of times and that the parties
have had ample opportunity to address the issues which are now
being addressed and that there should not be anything in the
outline of submissions or the further affidavit which
occasions any particular surprise.

In fact, what is there is quite consistent with the admission
made under oath in the proceedings in the Magistrates Court.
The plaintiff seeks summary Judgment pursuant to rule 292 of
the Uniform Civil Procedure rules and also Judgment on the
counter-claim pursuant to rule 293.

The applications are opposed by the defendant, Mr Moss, who
has a cross application. He seeks to have the plaintiff's
defence to the counter-claim (interpreting his application)
struck out on the grounds that it has no real prospect of
success and that there is no need for a trial of the claim or
any part of the claim.

Perhaps, on reflection, I have misread the document and what
is being sought is really that there be summary Judgment on
the plaintiff's claim. In any event, the matter is of no
particular importance in the view that I take of the merits of
the matter.

In its statement of claim the plaintiff alleges that it provided financial accommodation to the defendant by way of a loan facility of \$735,000 pursuant to the terms of a loan agreement entered into between the plaintiff and the defendant on or about 11 October 1999. It is further alleged that the defendant has failed and refused to pay the principal and interest accrued thereon.

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The defendant initially admitted the making of the loan but made various other allegations about the conduct of the plaintiff and the lending policy of the plaintiff. It did not seem to me that there was any valid defence at law made out or capable of being made out in that defence. However when the matter first came before me I thought it desirable to give the defendant a further opportunity to replead and to reformulate his defence or defences. He then amended his pleadings and in so doing accepted the existence of a loan agreement between himself and the plaintiff but denied that any monies had ever been "provided to the defendant".

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He made a number of other allegations which included the failure on the part of the plaintiff to advise him to seek independent legal advice, undue influence on the part of the plaintiff and breach of duty on the part of the directors. The pleading, as I pointed out to Mr Moss when the matter twice came before me was defective and liable to be struck out on that ground, or importantly though for present purposes there was no sworn evidence which appeared to me to

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support any sustainable defence.

In an affidavit sworn by him with a view to resisting the plaintiff's application, the defendant swore that "funding was advanced to a separate legal entity, the Moss Family Trust" and further that the defendant was not a trustee or beneficiary of that trust.

The plain fact of the matter however is that the defendant personally made application for the loan. His application constituted an offer to the plaintiff which the plaintiff accepted thereby giving rise to a loan agreement between the plaintiff and defendant. Alternatively, the offer was made by the plaintiff and accepted by the defendant. In any event there was a contract between the two under which the plaintiff agreed to lend certain monies to the defendant and the defendant agreed to borrow and repay those monies on the terms and conditions in the document which is GDS1.

Miss Downes, who appears for the plaintiff in a helpful outline of submissions which I have marked Exhibit 3 points to a great many occasions on which the defendant has accepted the existence of a loan agreement between himself and the plaintiff and the advance of monies by the plaintiff to him. I do not propose to go through all of those matters but they offer strong support to the conclusion I have reached by reference to the basic documentation identified by me. It is that there was a loan agreement between the plaintiff and the defendant under which monies were advanced to the

defendant, which monies have not been repaid.

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I am satisfied that the defendant has no real prospect of successfully defending any part of the plaintiff's claim and that there is no need for a trial of the claim or any part of it. I am similarly satisfied that there is no prospect of the counterclaim succeeding and that there is no need for a trial of the counterclaim.

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HIS HONOUR: I order that the defendant's application filed on 3 July 2002 be dismissed and that the defendant pay the plaintiff's costs of and incidental to that application to be assessed on the standard basis.

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I order that there be judgment for the plaintiff on its claim and the counterclaim in the sum of \$878,708 (being principal of \$788,446 and interest of \$90,262).

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I order that the defendant pay the plaintiff's costs of and incidental to the proceedings to be assessed on the standard basis, including reserved costs if any.

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