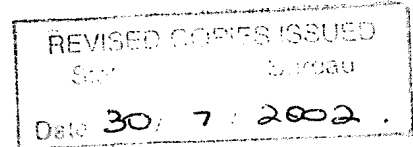




Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No

TRUE BLUE CHEMICALS PTY LTD
(ACN 003 055 730)

Applicant (Plaintiff)

and

TRU BLU CHEMEX PTY LTD
(ACN 100 346 530)

Respondent (Defendant)

CAIRNS

..DATE 26/07/2002

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 am satisfied that there is some urgency in the
circumstance which confronts the applicant, relying on the
accuracy of the information contained in the affidavit of
William James Kirkwood.

The circumstances in which the defendant came into possession
of the products supplied by the plaintiff and the
representations which were made by the officers of the
company, Taprobane Pty Ltd, as to its payment of the
applicant's accounts for the products, I am satisfied on this
material were incorrect. I am satisfied on such material as is
before me that the products ordered by Taprobane Pty Ltd are
the same as those which are now in the possession of the
defendant company.

Until the rights of the parties can be determined, having
regard particularly to the ownership of those products,
pursuant to the terms of supply to Taprobane Pty Ltd, then the
products should not be dealt with.

The only way, it seems to me, in which the status quo can be
maintained and the products not be sold to third parties, is
that I make the order ex parte and for a short period only, to
give an opportunity for the defendant to be heard and to place
before the Court any evidence which contradicts that set out
in the draft affidavit of Mr Kirkwood.

...

HIS HONOUR: The period of the restraint should be limited to 5 p.m. on Tuesday, the 30th of July 2002, and the matter will be adjourned for further hearing before me at 2.15 p.m. on Tuesday, the 30th of July 2002.

Further to that, I make orders in terms of the draft initialled by me and placed with the papers. I direct that the copy of the application, the affidavit of William James Kirkwood and this order be served forthwith on the defendant. Such service may be effected by facsimile transmission, or alternatively, by the notification orally of the terms of the order by telephone communication by the solicitors for the plaintiff.

....

HIS HONOUR: I should add that the affidavit of Mr Kirkwood reveals that the product which the plaintiff contends remains its property is capable of being mixed with other products and there is a fear that if notice is given of these proceedings that the product which the plaintiff claims as its will be either mixed in such a way that it will be no longer identified or that it might be moved so that its whereabouts cannot be traced.

For this reason the plaintiff seeks an order that it have the right to enter the defendant's premises and inspect and make records of the products over which it claims ownership.

In the interests of limiting the terms of potential dispute it seems to me that it is preferable for the plaintiff to have the right to inspect the property and for the defendant to be restrained from moving that property for the short period which is involved between the service of this order and the time at which the matter can be returned to the Court.

I have decided that the service of the notice should precede the making of the inspection to allow the defendant the opportunity to take legal advice on its position and to arrange for either its solicitors or some independent persons to be present when the plaintiff makes the inspection which I propose ordering ought to be allowed.

I will therefore make orders in terms of the amended draft
initialled by me and placed with papers.

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