



Transcript of Proceedings

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Date: 8 May, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WHITE J

No 11596 of 2002

SUNCORP-METWAY EQUIPMENT LEASING
PTY LTD ACN 100 847 443

Plaintiff

and

GOLDKEY PTY LTD ACN 057 813 395

Defendant

BRISBANE

..DATE 23/04/2003

JUDGMENT

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HER HONOUR: This is a reference from the Registrar pursuant to Rule 982 of the Uniform Civil Procedure Rules. On the 19th of December 2002 the plaintiff as lessor commenced a claim against the defendant as lessee for the recovery of possession of certain leased goods and further and alternatively damages for detinue, conversion and interest.

On the 3rd of April 2003 the plaintiff sought judgment in default of defence in terms of the claim for return and/or delivery up of the goods, \$259,562.78 being the value of the goods, damages for detention and conversion and interest.

The request did not follow Form 25 of the Rules in as much as there was no request consistent with Rule 285(2)(a), namely "The claim is for the detention of goods and the plaintiff requests judgment for the return of the goods or payment of their value to be assessed and asks that the value be assessed by the Court". The claim itself, as mentioned, is in terms for the return of the goods and further or alternatively an amount for the value of the goods.

Judgment was entered on 3rd April 2002 and is said to be pursuant to Rule 285(2)(a) for:

- (1) The return of the specified goods;
- (2) Alternatively (and subject to section 24 of the Supreme Court Act 1995) the defendant pay to the plaintiff:
 - (a) The value of the goods to be assessed by the District Court at Brisbane and,
 - (b) Damages for detinue or alternatively conversion to be assessed by the District Court;

(3) Costs.

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On 7 April 2002 the plaintiff sought to file an enforcement warrant in Form 86. It omitted any reference to the value of the goods as assessed as Form 86 anticipates, and merely sought that the specified goods be seized by the enforcement officer and delivered to the plaintiff.

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The application was refused, in effect because the judgment was entered pursuant to Rule 285(2)(a) and did not comply with it. Rule 285(2)(a) provides:

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"The plaintiff may file a request for judgment against the defendant within the limits of the plaintiff's claim for relief either:

- (a) For the return of the goods or the value of the goods conditional on assessment under Chapter 13 part 8 and for costs;..."

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By sub rule (3) if a plaintiff files a request for judgment under sub rule (2) the Court as constituted by a Registrar may give judgment in accordance with the request. By sub rule (5) if the plaintiff seeks an order for the return of specified goods the plaintiff must apply to the Court, meaning as constituted by a Judge, for an order.

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Mr Wilkins, the solicitor for the plaintiff, contends that section 24 of the Supreme Court Act 1995 (formerly section 16 of the Common Law Practice Act 1867) permits the Sheriff (now an enforcement officer) if required by the plaintiff, to demand and seize the specified goods where the claim is so endorsed and this justifies the form of the warrant requested.

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JUDGMENT

I will now set out sections 24 and 25:

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"PROCEDURE AFTER VERDICT FOR RECOVERY OF SPECIFIC GOODS:

24 When the action shall have been brought to recover specific goods and the plaintiff shall have claimed a return of such goods or their value and damages for their detention and shall have recovered a verdict and judgment in such action it shall be lawful for the sheriff if so required by the plaintiff to demand and seize the specific goods claimed if they can be found by the sheriff and to deliver them to the plaintiff and if the sheriff shall not find and seize the said goods it shall be lawful for the Court or a Judge if the said Court or Judge shall see fit on the application of the plaintiff to order the actual return thereof and to enforce such order by process of attachment and if such application be refused or if such order be not obeyed the plaintiff may by leave of a Judge procure a separate writ of fieri-facias to be issued for the value of the goods without prejudice to the plaintiff's right to issue execution either before or after or concurrently therewith for the plaintiff's costs of the suit and the damages awarded for the detention of the goods.

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SPECIFIC DELIVERY OF CHATTELS:

- 25 (1) The Court or a Judge shall have power if they or the Judge see fit to do so upon the application of the plaintiff in any action for the detention of any chattel to order that execution shall issue for the return of the chattel detained without giving the defendant the option of retaining such chattel upon paying the value assessed and if the said chattel cannot be found and unless the Court or a Judge shall otherwise order the sheriff shall distrain the defendant by all the defendant's lands and chattels in the said sheriff's bailiwick till the defendant render such chattel or at the option of the plaintiff that the defendant cause to be made of the defendant's goods the assessed value of such chattel.
- (2) However, the plaintiff shall either by the same or a separate writ of execution be entitled to have made of the defendant's goods the damages costs and interest in such action.
- (3) Also the plaintiff may proceed under section 24 anything this section contained notwithstanding."

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Section 24 permits the seizure by the enforcement officer of the goods specified in the claim, but it does not exempt the plaintiff from having a value of the goods in the judgment. Section 25 is a wider power in the Court to order execution on specific chattels in any action for detinue without giving the defendant the option of retaining the chattel upon paying the value of the chattel.

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The history of the development of the forms of judgment in detinue is discussed by Lord Diplock in *General and Finance Facilities Ltd v. Cook's Cars (Romford) Ltd* 1963 1 WLR 644 at 650-1 and considered by McInerney J in *General Motors Acceptance Corporation v. Davis* 1971 VR 734. The form of relief is mentioned by Hoare J in *Juhlinn-Dannfelt v. Crash Repairs Pty Ltd* 1969 QWN 1.

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This is a matter concerning the jurisdiction of the Registrar not about the power of the Court to order the return of specified goods simpliciter. Rule 285 reflects the various forms of judgment available to a plaintiff claiming the return of goods reflected in sections 24 and 25 of the Supreme Court Act of 1995.

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If a plaintiff obtains summary judgment before a Registrar the plaintiff must obtain an assessment under Rule 285(2)(a) if it is to be enforced. The enforcement warrant then proceeds in accordance with Rule 916(2). If specified goods only are sought the plaintiff must seek judgment from the Court

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constituted by a Judge pursuant to Rule 285(5) and the
enforcement warrant will issue under Rule 916(1).

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Accordingly the Deputy Registrar was correct to refuse to
issue the warrant as requested.

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