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## Transcript of Proceedings

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State Reporting Bureau  
Date: 16 July, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 85 of 2001

RAY MOLONEY and  
INTERNATIONAL JOCKEY SCHOOL PTY LTD          Plaintiffs

and

FRED MARSH PTY LTD (ACN 009 697 367)          Defendant

CAIRNS

..DATE 14/07/2003

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: The original statement of claim in this matter was filed on the 27th of June 2001. That pleading was amended by a new document filed on the 9th of October 2001. There were interlocutory matters heard based on that statement of claim and those matters have been subject to appeal to the Court of Appeal which gave its order on the 10th of October 2002.

I am informed from the Bar table that in the course of argument before the Court of Appeal mention was made of the need for an amended statement of claim to be filed, although the order of the Court does not expressly provide that leave. That, of course, may not be necessary because rule 387 provides that a party may, as often as necessary, make amendment to pleadings for which leave of the Court is not required under these rules. The onus is placed on the other party to raise objection to the amended pleading and, if necessary, apply to the Court for its disallowance.

Since the judgment of the Court of Appeal there have been three further attempts at providing a statement of claim. These resulted in amended statement of claims being filed on the 11th of April 2003, 24th of April 2003, and 28th of May 2003. The filing of those three amended statements of claim has been the plaintiff's response to meeting objections raised by the defendant in relation to the pleading. In that sense the defendant has been attempting to avoid increasing costs by meeting the objections as they are raised.

Whilst that is laudable conduct, the result is nonetheless  
that not all of the defendant's objections have been met and  
the last amended document does not present the plaintiff's  
case in a way which would allow it to be conveniently  
understood by the Court. The question then arises as to  
whether a composite document should be prepared which  
incorporates all of the amendments encompassed in these three  
documents, and any further pleading, rather than having to  
delete parts of the composite document and put in new parts.  
It seems to me that that would create a document which would  
be more confusing than helpful, particularly as the numbering  
of paragraphs was changed in the last amended document.

In all the circumstances it seems to me better that the  
amended statement of claim in the terms in which it appeared  
at the hearing of the appeal should now form the basic  
document and that any amendment to that document which is now  
desired should be made in accordance with the rules, that is,  
by deleting the parts of that basic document which are no  
longer relied upon and adding the new allegations, including  
particulars, which are now relied upon.

That result can be achieved by my simply disallowing the three  
documents which have been filed since the Court of Appeal  
judgment and allow a new pleading which should bear the  
heading "Further amended statement of claim" to be prepared  
using the statement of claim filed on the 9th of October 2001  
as the basis.

...

HIS HONOUR: In those circumstances I will make orders in terms of the draft initialled by me and placed with the papers.

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HIS HONOUR: My order will be that the first-named plaintiff pay the defendant's costs of and incidental to the application to be assessed, including costs in respect of the adjournment of the application on the 2nd June 2003.

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