



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

REVISED COPIES ISSUED
State Reporting Bureau

Date: 2 October, 2003

No 620 of 2002

SALVATORE CATALANO (on behalf of
himself and all others)
and
COMMONWEALTH OF AUSTRALIA

Applicant

Plaintiff by
Counterclaim

and

BUNDABERG SUGAR LIMITED
and

First Respondent

SOUTH JOHNSTONE MILL LIMITED
(RECEIVERS & MANAGERS APPOINTED)
and

Second Respondent

CANEGROWERS SOUTH JOHNSTONE MILL
SUPPLIERS COMMITTEE
and

Third Respondent

SOUTH JOHNSTONE MILL NEGOTIATING TEAM 2000
and

Fourth Respondent

SOUTH JOHNSTONE MILL NEGOTIATING TEAM 2001
and

Fifth Respondent

QUEENSLAND CANE GROWERS ORGANISATION LIMITED
and

Sixth Respondent

COMMONWEALTH OF AUSTRALIA
and

Seventh Respondent

PAUL LOUIS GRIMA (on behalf of himself
and ors)
and

First Defendant
by Counterclaim

QUEENSLAND CANE GROWERS ORGANISATION LIMITED

Second Defendant
by Counterclaim

CAIRNS

..DATE 18/09/2003

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.

THE CHIEF JUSTICE: Mr Catalano instituted proceedings in this Court on behalf of himself and other growers in relation to the so-called rescue package entered into in respect of the 2000 to 2001 crushing seasons.

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The Commonwealth had provided an indemnity in support of a grower rescue package for South Johnston Mill Limited, and had paid the amount of \$2.5 million to the National Australia Bank pursuant to that indemnity.

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The Commonwealth has been repaid approximately \$725,000 of that amount. Of the amount not yet repaid \$865,000 is being held in a trust account controlled by the solicitors for Bundaberg Sugar Limited. The amount repaid to the Commonwealth, together with the amount held in that trust account was contributed by suppliers to the South Johnston Mill Limited through five per cent deductions out of their proceeds for the 2000 and 2001 crushing seasons.

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In these proceedings, Mr Catalano sought to recover contributions made by him by the growers he represented and by unrepresented growers in the amount of \$725,000-odd, repaid to the Commonwealth, and the amount held in the solicitor's trust account. He also sought to avoid any alleged liability to repay the unpaid amount of that provided by the Commonwealth which is \$1.8 million approximately. He contended in the proceedings that the agreements under which the five per cent deductions were made were not valid.

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The Commonwealth responded that the deductions were lawful and that it is entitled to retain the amount already paid and to receive the additional amount of \$1.8 million approximately, including the amount held in the solicitor's trust account.

A mediation was held on the 19th and 20th of May 2003, before a Queen's Counsel. All parties, except South Johnston Mill Limited and the so-called unrepresented growers were represented at the mediation. I should say that South Johnston Mill Limited is in receivership and has indicated that it wishes to play no further part in the proceedings.

The result of the mediation was that the parties settled the proceeding on terms set out in the document comprising Exhibit DBM4 to the affidavit of Douglas Boyd McKinstry, filed on the 12th of September 2003. I am now asked to order that Mr Catalano's originating application be dismissed, and to make a declaration that that order binds all parties, speaking broadly, all relevant growers, including those not represented at the mediation or before me or in the proceeding overall.

The material shows that the growers who have contributed to the Catalano Fighting Fund all agree to the orders which are proposed.

As to the unrepresented growers, some responded to an inquiry accepting the terms of settlement. All unrepresented parties have been informed of what is proposed, and only some 20 growers remain as truly unrepresented interested parties. They

are not parties in the strict sense. Two of those 20, including Mr Edgerton who has been present in these proceedings today, actively oppose the orders sought.

Clause 12 of the terms of settlement provide that it is conditional upon three things occurring as relevant here. The first is that unrepresented growers whose combined deduction totals no less than \$1,044,185.47 elect to become consenting growers. That has occurred. Second, that the Commonwealth, Bundaberg Sugar Limited and Mr Catalano are provided with Cane Growers South Johnston Mill Suppliers Committee with a list of unrepresented growers who so elect. And that has been satisfied. And, finally, the Court making an order substantially in the form set out in schedule 2 to the agreement binding on all represented growers and all consenting growers.

Now, schedule 2 to the terms of settlement sets out minutes of proposed orders basically in the terms of the application filed before me, and the schedule is blank. In other words, it was contemplated that the Court should itself specify or identify the parties who are to be bound by the order dismissing the originating application. That will involve, of course, a binding exclusion of further proceedings in respect of these matters in relation to the parties bound by the order made here today.

I have, therefore, to be careful to ensure that only those parties are bound who are parties in the strict sense who,

having been given the opportunity to be bound, have indicated
that they consent to the orders proposed, but excluding
persons who are not parties and who have not participated in
the proceeding leading to the settlement, and who oppose being
bound now.

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It seems to me that the 20 entities to whom I have referred
fall into that category. I am referred to section 82
subsection 2 of the Supreme Court of Queensland Act 1991 which
says that unless the Court orders otherwise in addition to
binding the parties to the proceeding the order binds the
persons who have the same interest as the representative party
and could have been parties in the proceedings.

That relates to representative proceedings generally. It
gives the Court a discretion to bind people who have not
played an active role in the proceedings but nevertheless
because of the identity between their interest and that of
those who have actively pursued the proceedings should be
bound in the full sense.

If this were a case where now the ultimate result flowed from
a determination of the merit of the proceeding by the Court I
can see that that subsection may have had operation which
could extend to binding even the 20 dissident parties to whom
I have referred.

But where the final orders to be made flow from a mediation
conducted outside the Court by a Queen's Counsel I do not
think that the Court should use a provision of the nature of
section 82 to bind parties who oppose being bound to the
ultimate result.

I will therefore make the declaration but limiting the parties bound by it so as to exclude the 20 non-consenting or actively opposing entities to whom I have earlier referred.

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Do you have a draft that reflects that?

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MR MCKINSTRY: Yes, your Honour. I have a draft and I have removed the names of the 20 growers from the list that is attached to the application - the schedule to the application. So, the parties that remain under the part 2 of the schedule to this order do not include Mr Edgerton or the other growers.

THE CHIEF JUSTICE: Well, have you seen that, Mr Edgerton?

MR EDGERTON: No, sir, I haven't.

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THE CHIEF JUSTICE: Would you have a look at that please before it comes up to me?

MR EDGERTON: Your Honour, will a list of non - non-bound people be supplied or will it just be-----

THE CHIEF JUSTICE: No. It is just the people who are bound who will be named in the order. No problems?

MR EDGERTON: No sir. Your Honour, may I - is - is it possible for the - any of the 20 to become consenting growers still?

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THE CHIEF JUSTICE: I do not know.

MR EDGERTON: Not myself but - but some of the others once they-----

MR MCKINSTRY: Not through these proceedings. That would be a matter, I think, that if they indicated that they would be becoming consenting growers and they would therefore like their entitlement to settlement moneys released to them well I'm sure-----

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THE CHIEF JUSTICE: They would have to negotiate their position with the Commonwealth would they not?

MR MCKINSTRY: That's right, your Honour.

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THE CHIEF JUSTICE: Yes. No, the dye is cast I am afraid, Mr
Edgerton, from the Court's point of view. Order as per draft.

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