



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No S10771 of 2001

RUSHTON (QLD) PTY LTD
(ACN 079 140 364)

First Plaintiff

and

SENMEAD PTY LTD (ACN 063 308 008)

Second Plaintiff

and

APADA INVESTMENTS PTY LTD
(ACN 097 895 272)

Third Plaintiff

and

RUSHTON (NSW) PTY LTD
(ACN 079 164 202)

First Defendant

and

RUSHTON (VIC) PTY LTD
(ACN 079 140 419)

Second Defendant

and

RUSHTON (SA) PTY LTD (ACN 079 164 177)

Third Defendant

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BRISBANE

..DATE 27/11/20003

JUDGMENT

HIS HONOUR: Subject to Mr Matic's evidence, I am satisfied that the plaintiffs have established the quantum of their damages. I accept Mr Holzberger's evidence. He was subjected to a detailed and lengthy cross-examination which did not cast any doubt, in my view, on any factual assertions made by him, or for that matter any opinions which he expressed. I see no flaw in the methodology employed by Mr Holzberger or Mr McDonald, who gave expert evidence on behalf of the plaintiffs, and accept the calculations in Exhibit 11 as showing the extent of the plaintiff's loss.

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It is significant that challenges were made to the plaintiff's approach in cross-examination on the basis of assumptions which are not supported by the evidence of anybody called to give evidence. The plaintiff's case proceeds upon a very careful analysis of the defendant's own documents, drawing on Mr Holzberger's intimate acquaintance with the way in which the business affairs of the defendants are conducted.

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Mr Rogan could, if he had wished, given evidence as to matters particularly within his own knowledge, but has declined without explanation to do so.

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I therefore see no reason why there should not be judgment in favour of Rushton (Qld) Pty Ltd in the sum of \$712,327, together with costs.

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For the reasons I have already given, I order that there be judgment in the action in favour of the first and third plaintiffs in the sum of \$712,327 against the first second and

third defendants together with the costs of and incidental to the action, including reserved costs, if any, to be assessed on an indemnity basis.

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I vacate paragraph 7 of the order made by me on 18 March 2003.

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I otherwise adjourn the trial to permit determination of the question of costs as between the plaintiffs and Peter George Rogan to a date to be fixed.

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I direct that no party be entitled to any costs incurred in the assessment of costs undertaken in whole or in part in relation to paragraph 7 of the order of 18 March 2003.

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