



## Transcript of Proceedings

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State Reporting Bureau  
Date: 19 March, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 420 of 2002

HATRUN PTY LTD (ACN 010 924 642)  
as trustee for the Barron Development  
Trust

Plaintiff

and

HYSEN MEHMET

Defendant

CAIRNS

..DATE 16/03/2004

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 take in my reasons. When I delivered judgment on the principal relief on the 8th of May 2003 I reserved for further argument the question of the appropriate vesting of the property in a new trustee. The basis for adjourning that question was that it was evident throughout the hearing that considerable ill-will existed between the partners in the joint venture for which the trust for the development of the subject land was established. Because of that ill-will it seemed to be inappropriate for the land to vest in the plaintiff.

The plaintiff then proposed that the land vest in Mr Lindsay Noel Gilman, who is known to all parties and indeed who has acted in a professional capacity as accountant for each of the parties. That proposal was made in a formal way on the 6th of August 2003. Included in the proposal was a direction to the trustee that he should act in accordance with the written directions from time to time of the plaintiff in its capacity as trustee of the Barron Development Trust save where the trustee formed a view that the instructions were not in accordance with the best interests of the beneficiaries of that trust.

That seemed to me to be an entirely appropriate proposal unless some argument could be raised about the suitability of Mr Gilman fulfilling that role. No such argument was raised. The plaintiff's solicitors wrote again on the 18th of December 2003 asking for a response to that proposal and suggesting that failing such response that the matter would have to be

relisted for determination of the outstanding issue. That is what has in fact happened. When the matter came on for hearing before me today the defendant, through his solicitors, made no response to the proposal. After some urging from me, instructions were further obtained to say that the defendant had no objection to the proposal.

All of that, of course, could have been done by a solicitor's letter back in August of 2003 without having to engage the time of lawyers, the expense of the other party, and indeed wasting the time of the Court.

The question of costs then falls to be considered on two bases: firstly, the costs associated with the hearing for the principal relief, namely the declaration of the trust. In that respect the plaintiff was successful and I will make an order for costs in the usual terms that costs of and incidental to the hearing be paid by the defendant to the plaintiff to be assessed on the standard basis if not agreed.

In relation to the costs associated with the determination of the making of the vesting order, those costs I order be paid by the defendant to be assessed on an indemnity basis if not agreed.

My orders therefore will be as follows:

- (a) That the land situated at Kennedy Highway, Atherton, described as lot 4 on registered plan number 6912 be

vested in Lindsay Noel Gilman as trustee for the Barron Development Trust.

- (b) That the defendant execute all such documents and do all such things necessary to transfer the said land to the plaintiff; 11
- (c) That in default of the defendant complying with the order referred to above within 21 days of being requested to do so that the Registrar be authorised to sign all documents and to do all things necessary to transfer the land to the plaintiff in the stead of the defendant; 21
- (d) That the defendant pay the costs of and incidental to the proceedings up to the date of the judgement on the 8th of May 2003 to be assessed on the standard basis; 31
- (e) That the defendant pay to the plaintiff costs of and incidental to these proceedings from and including the 6th of August 2003 to be assessed on an indemnity basis. 4

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HIS HONOUR: I add to those orders that the trustee have liberty to apply on giving two days' notice to each of the other parties. 5

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