



## Transcript of Proceedings

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Date: 5 March, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 628 of 2003

MATILDA MOTORHOMES PTY LTD

Applicant

and

HUNTSMAN CHEMICAL COMPANY AUSTRALIA  
PTY LTD

Respondent

CAIRNS

..DATE 02/02/2004

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: This is an application to set aside a statutory demand supported by an affidavit that was sworn on the 27th of August 2003. The demand arises out of what appears to be a contract for goods sold and delivered by the respondent to the applicant, over a period of time commencing in 2001. The total claim for the value of goods delivered made by the respondent is \$38,463.55.

The applicant refused to pay that amount, and that led to proceedings being instituted in the Magistrates Court in Victoria. The applicant, in his notice of defence in those proceedings, admitted that he had received goods to the value of \$25,000, but denied that he was liable for the balance of \$13,463.55 on the basis that these goods have not been delivered. The \$25,000 was clearly an estimate of the value of the goods which the applicant says was delivered to him.

After the institution of those Magistrates Court proceedings in Victoria the applicant sought particulars for confirmation of delivery of the goods so as to allow the applicant to make further inquiries as to the amount of claim. No such documents were provided until the service of an affidavit of John DuKamp, which was sworn on the 27th day of January 2004, there for the first time documents detailing lists of products and items which are alleged to have been delivered to the applicant. But the documents themselves do not contain any confirmation from the applicant that it had received those goods.

So, the applicant appears to be prepared to stand by its concession of goods, at least to the value of \$25,000, and were in fact received.

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The Magistrates Court proceedings resulted in judgment by default being entered against the applicant. This was done without the applicant being informed that an application for default judgment was being made. The failure to be informed was because the Magistrates Court apparently did not send the relevant documentation to the applicant's address as it appeared in the notice of address for service, but rather to the address which was shown in the records of the Australian Securities and Investment Commission.

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There is only a minor difference between those two addresses. In the official Commission's records the address is shown as "Cairns North". In the Court proceedings the address is shown simply as "Cairns". That would appear on the surface to be a minor difference, but Mr Chapman on behalf of the applicant has sworn a further affidavit to indicate that the address is critical in determining whether the documents would be delivered by the post office. Mr Ryall of counsel has described this as a quirk within the Australia Post system, and that certainly seems to be so. Documents bearing the address simply "Cairns" are delivered to a box number at the main postal centre, whereas the documents addressed to "Cairns North" are not.

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The first indication that a judgment by default had been entered against the applicant came to the knowledge of the applicant only in receipt of the statutory demand.

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The applicant has indicated its intention to make application to set aside the judgment so entered, and is prepared to condition its application for an adjournment on the basis that it will so apply within 14 days from today's date.

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Given that these Magistrates Court proceedings have now been underway since the year 2002, concerning debts which appear and which allege to have arisen in 2001, any argument by the respondent for the judgment in those circumstances to be acted upon to its full extent and allow it to proceed to an application for winding up seems to me to be a little bit hollow.

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The respondent has not pursued its claim with the ordinary level of commercial diligence one would expect. Had it done so, had it provided particulars in a timely way there may not have been any need for these proceedings at all. But since the events have occurred in this unfortunate way it seems to me that there still is a genuine dispute identified in the material before me, and the applicant ought to have the opportunity to have that dispute determined on a proper basis. Namely, if there is no agreement between the parties on the documents so lately provided then the matter can be litigated in the Magistrates Court.

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Given that the applicant has conceded that it owes a sum of money which it estimates at \$25,000, I do propose to condition the adjournment upon the applicant's payment of that sum within 14 days and on the further condition that it makes application to set aside the judgment within 14 days.

My orders will therefore be that this application be adjourned to a date to be fixed, pending the determination of an application to set aside judgment of the Magistrates Court, Victoria, entered on the 28th of October 2003, by the respondent against the applicant. The adjournment is granted on the following terms and conditions, namely:

- (1) The applicant pay to the respondent the sum of \$25,000 within 14 days;
- (2) The applicant file and serve an application to set aside the said judgment within 14 days from today's date.

Costs of and incidental to this application will be reserved.

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