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State Reporting Bureau
Date: 5 July, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 44 of 2004

STEPHEN PHILLIP GLEESON

Respondent/Plaintiff

and

AUS-EZE PTY LTD (ACN 073 916 962)

Applicant/Defendant

CAIRNS

..DATE 30/06/2004

JUDGMENT

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HIS HONOUR: By this application the defendant sought the production of various documents by the plaintiff and, as well, requested that order be made that the plaintiff answer particulars and that there be an amendment to the plaintiff's statement of claim. When the parties appeared before me this morning I was advised that the application with respect to the production of documents and the amendment of statement of claim is no longer pressed.

In relation to the application for the provision of further and better particulars the parties have now reached agreement that some of the requests were not properly made, but, in respect of the balance, the plaintiff agrees that further and better particulars should be provided. That being the case there is no objection to my making orders for the delivery of the further and better particulars in respect of the uncontested request, to be made within 14 days.

The defendant sought additionally a guillotine order in respect of the provision of particulars and seeks also the costs of and incidental to the application. I have indicated that I am not in favour of making a guillotine provision, but I will consider the question of costs.

In that regard, the defendant's solicitors first requested in writing the provision of particulars by letter dated 24th of February 2004. The letter purported to be made pursuant to rule 444 of the UCPR, but as to whether the requirements of that rule have been complied with is a matter that is

challenged. Putting that matter to one side, there was no response to the defendant's letter at all.

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An application was then issued on the 24th of May 2004. That precipitated some discussions which has led to the agreements which I have referred to above, but not until after there was an appearance before me on the 22nd of June and the matter then being adjourned by agreement to today's date.

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The plaintiff seeks to avoid the question of costs by firstly raising questions about whether the letter of the 24th of February 2004 complied with rule 444, and then by suggesting that between that date and the filing of the application there should have been some follow-up letter or discussion before the application was filed.

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In my view, the need for the application, and at least one of the appearances, is directly due to the inaction by the plaintiff. It appears to me that the letter of the 24th of February 2004 was simply ignored, and that necessitated the filing of the application. Then it appears to me that there was no serious discussion of the issues raised by the application prior to the first appearance on the 22nd of June 2004.

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This is a commercial matter. The documents which were sought, the request for particulars which were made, ought to have been answered promptly and that there is no explanation given as to why they were not answered promptly. Prima facie,

therefore, the applicant is entitled to its costs up to the 22nd of June 2004.

The issue which made necessary the adjournment, and the final appearance before me today, included questions of the validity of the request for further and better particulars. The applicant has conceded that some of the requests made were not valid and has been prepared to abandon it.

In those circumstances there is some justification of the adjournment that was made by consent on the 22nd of June 2004 and I will not order any costs in respect of costs occasioned by the adjournment itself. However, I do order that the respondent pay the applicant's costs of and incidental to the application, save for costs occasioned by the adjournment on the 22nd of June 2004.

My orders will therefore be in terms of the amended draft initialled by me and placed with the papers.

Gentlemen, that draft is amended not only in the manner in which I have just previously indicated but by adding to paragraph 2 the words, "save for costs occasioned by the consent adjournment of 22 June 2004."
