



Transcript of Proceedings

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Date: 13 September, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No 5415 of 2000

SACOLA COMPANY LIMITED
(ARBN 052 455 044)

Plaintiff

and

GORMAC DEVELOPMENTS PTY LTD
(ACN 010 901 603)

Defendant

BRISBANE

..DATE 03/09/2004

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 for security for costs. 1
The sum sought is slightly in excess of \$140,000.

The plaintiff is a company incorporated in Hong Kong. It has
no assets in Australia. It is presently prosecuting 10
complicated litigation which has been on foot for several
years.

The third defendant, which brings this application, is
presently proposing to amend its defence. The trial therefore 2
seems some time away, despite directions to be made today
regulating the progress of the case towards a trial if a
mediation fails.

It was only a few months ago that the applicant's solicitors 30
first wrote to the plaintiff's lawyers making a request for
security for costs. It was in relation to the costs from that
time forward to trial. So the delay between the inception of
the proceedings and the notifying of the request (and the 40
bringing of the application for security) is significant.
That is often an important consideration, as it is here. But
the weight to be attached to it needs to be considered in the
light of other pertinent circumstances, including an absence
of any contention that the litigation has been prosecuted in a
hope or expectation that an application for security for costs 50
might not be made.

Plainly, the plaintiff is a corporation in respect of which
there is good reason to believe that it would not be able to

pay the applicant's costs, if ordered to pay any substantial part of them. So the jurisdiction to make the order is enlivened. And the company is, as I have said, a foreign corporation with no assets in Australia.

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The other important consideration is that, though the plaintiff appears to be without resources, the litigation is being sponsored, and effectively prosecuted, by others who stand behind the plaintiff. There is no evidence that any of them lacks the wherewithal to provide security.

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In short, there is no justification for any apprehension that the due prosecution of the case by the plaintiff might be affected by an order for security for costs. Indeed, that substantial security has previously been provided in support of an undertaking as to damages offered by this foreign plaintiff suggests that there is no risk at all that an order for even more than the about \$140,000 sought might prejudice the plaintiff's prospects of pursuing the case to the end of a trial.

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There is a dispute about what the quantum of the order ought to be. One side suggests a figure half that proposed by the other.

It is not possible to form a concluded view about how long the trial is likely to take. But the issues seem, on the present

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pleadings, relatively complicated; and from what I have been told by Mr Sullivan, the proposed amended pleading is unlikely to simplify things.

There will be a need for interpreters.

The case is therefore very likely to take a long time to try. As best it can be presently estimated, I do not regard the period of time predicted by the applicant as inflated. And I do not consider that any discount ought to be made from the amount of security which is being sought for that, or any other, contingency.

Therefore, rounding the amount off, there will be an order for security for costs in the amount of \$140,000, and I will hear submissions with respect to the form of order.

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HIS HONOUR: The Registry will be informed that the estimate is 45 minutes, and there will be orders as per drafts.
