

Library



[2004] QSC 431

Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

REVISED COPIES ISSUED
State Reporting Bureau
Date: 12 November, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 46 of 2004

SINAN OGUN

Applicant

and

BRAMSTON BEACH PLANTATION RESORT PTY LTD
(ACN 094 849 224)

First Respondent

and

CHRISTOPHER DOUGLAS MICHAEL and
KATHLEEN MICHAEL

Second Respondents

and

DEREK ERROL ZIMAN

Third Respondent

CAIRNS

..DATE 11/11/2004

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 am going to refuse the application for these reasons. It seems to me that on the material before me now, particularly having regard to the most recent item, Exhibit 5, that the bank will require \$3,320,000 to release the mortgage in order for the sale to Whisper Bay Pty Ltd to proceed.

1

10

Each the of the parties wish the sale to proceed and so if you start from that point and the bank is so entitled, as it appears to be on the latest evidence before me, then there will be very limited funds available to meet the other obligations. I include in the other obligations to have been established, the repayment of principal only to Pobultru Pty Ltd, the costs of sale of \$55,000, and a payment to meet the obligations of the company to its employees Peter and Judy Thompson which is said in the affidavit of Kathleen Michael to be \$56,000.

20

30

Mr Morzone of counsel has indicated that these items are disputed. Certainly as to the claim by employees, the existence of employees working for the company has not been shown on balance sheets, but the evidence before me shows that there is at least a claim by these people. If it is shown in the end result that the payment to these employees was not justified then it is a claim which the applicant as a shareholder can make against the directors, the second respondents, in due course. But it is not a basis for, at this stage of the proceedings, setting aside funds to determine the validity of such a sale.

40

50

The real point of contention is the fact that it appears that moneys were provided by the company totalling some \$702,000 for the benefit of the directors, the second respondents. The company clearly has a claim against its directors if the situation is as the applicant asserts. That claim will no doubt be litigated in the ordinary way having regard to whatever documentary evidence there is relating to that particular advance by the bank and the manner in which it is secured on company assets. Again, the applicant will be entitled to fully litigate that claim both against the company and against the second respondents personally.

1
10
20

The application before me now which was brought on on an urgent basis was an endeavour to secure the balance proceeds of the partial payment of the sale price of \$4 million. The amounts that, on the evidence, seem to me are properly deducted there is a total of \$3,931,000 accounted for. The balance, \$69,000, would be available for a direction that it be payable into Court or paid in some way where the distribution could await a further hearing.

30
40

What is lacking in the application before me is any evidence that the second respondents are not financially able to meet a judgment based on the intended claim the applicant would seek to make, nor is there any suggestion that the second respondents are in the process of moving whatever assets they have out of the jurisdiction or in any other way dissipating assets that they have. In short, there is no basis for a Mareva style order.

50
60

I will, after hearing further submissions from Mr Jonsson, be prepared to consider making an order that the balance left from the receipt of the \$4 million after distribution as I have indicated will be permitted above should be paid into Court.

10

...

HIS HONOUR: The application is dismissed. I make no order as to costs.

20

30

40

50