

LIBRARY  
[2004] QSC 462

# State Reporting Bureau



Queensland Government  
Department of Justice and Attorney-General

## 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: 20 December, 2004

SUPREME COURT

CIVIL JURISDICTION

JONES J

No 477 of 2004

METAR PTY LTD (ACN 009 984 8470

Plaintiff

and

STUART HAGAN

First Defendant

and

PHOENIX LIME PTY LTD (ACN 096 355 761)

Second Defendant

and

KLEINHARDT FGI PTY LTD (ACN 061 015 272)

Third Defendant

and

HERB LAYT

Fourth Defendant

CAIRNS

..DATE 28/10/2004

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 by the third defendant pursuant to rule 674 of the Uniform Civil Procedure Rules for the dismissal of the plaintiff's claim against the third defendant. The basis upon which that dismissal is sought is the plaintiff's failure to give security for costs pursuant to an order made by this Court on the 3rd of August 2004. That order required the plaintiff, within 28 days, to give security for costs to the third defendant in the sum of \$25,000. The Court also ordered that the action be stayed in the event that the security for costs were not paid.

The plaintiff has not paid the security for costs in accordance with that order and has not come before the Court giving an explanation as to why the order has not been complied with nor giving any indication that the order might be complied with in the future.

This is an adjourned hearing of the third defendant's application, the matter having come on before me on the 19th of October 2004. I refused to deal with the application on that day essentially because the third defendant had not provided a notice of the application consistent with the requirements of rule 444, but at that adjourned hearing the legal representative on behalf of the third defendant had no instructions to either offer an explanation for non-compliance with the order nor indication of intention to pay.

I adjourned the application on that occasion not only for the reason that rule 444 had not been complied with but also to

underline the natural reluctance of the Court to dismiss a  
claim pursuant to rule 674, which is tantamount to denying an  
impecunious plaintiff an opportunity to litigate the claim.  
In this instance, however, the claim made by the plaintiff  
against the third defendant appears to be not well founded, to  
be no more than tenuous. In my reasons in making the order  
for security for costs one of the considerations was that  
there was no evidentiary basis shown for the plaintiff's  
assertion that the third defendant was acting upon a retainer  
from the plaintiff. There was evidence that the third  
defendant was retained by another organisation altogether to  
do the work which the plaintiff alleged was being done on its  
behalf.

It is the rather dubious nature of the plaintiff's claim,  
coupled with the fact that it makes no attempt to explain its  
non-compliance with the order or to give any indication that  
the order might be complied with in the future, that causes me  
to accede to the application which is now made.

I will therefore order that the plaintiff's claim against the  
third defendant be dismissed. I order that the plaintiff pay  
the third defendant's costs, to be assessed on a standard  
basis, of and incidental to the third defendant's defence of  
the plaintiff's claim, and including the costs of and  
incidental to the application for security for costs and this  
application to dismiss the claim.

-----

1  
10  
20  
30  
40  
50