

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BOND J

SC No 4392 of 2015

GOOMBOORIAN TRANSPORT PTY LTD ACN 011 054 658	First Plaintiff
J & M LOGHANDLING PTY LTD ACN 011 054 667	Second Plaintiff
BELLING INVESTMENTS PTY LTD ACN 123 710 734	Third Plaintiff
GOOMBOORIAN LOGGING PTY LTD ACN 076 970	Fourth Plaintiff
LITTLE YABBA DROUGHTMASTER STUD PTY LTD ACN 086 875 845	Fifth Plaintiff
EMMERDALE FARMING PTY LTD ACN 151 515 909	Sixth Plaintiff
JILRAY PTY LTD ACN 058 181 463	Seventh Plaintiff
J & M FARMING PTY LTD ACN 086 991 291	Eighth Plaintiff
J & M FARMING PTY LTD and LITTLE YABBA DROUGHTMASTER STUD PTY LTD ABN 89 152 178 639	Ninth Plaintiff
JOHN GERHARD BELLING	Tenth Plaintiff
MARLENE ANNE BELLING	Eleventh Plaintiff
ESTATE OF NORMA RENEE HANSON, DECEASED	First Defendant
DOROTHY MAUREEN HANSON	Second Defendant
NORMAN RICHARD HANSON	Third Defendant

BRISBANE

TUESDAY, 14 AUGUST 2018

JUDGMENT

BOND J: Earlier this afternoon I pronounced further orders in this proceeding, the effect of which was:

- (a) to require certain super funds to be converted into money;
- 5 (b) to require trust moneys to be taken out of a solicitor's trust account and paid over to the third and sixth plaintiffs;
- (c) to cause a car to be delivered over; and
- (d) to cause statutory trustees for sale in respect of a family home to be appointed

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An application for an interim stay of those orders is now sought by the second and third defendants. They seek a stay until 4 pm on 24 August 2018 or earlier order, it being contemplated that by that time the plaintiffs will be in a position to argue out all the issues relevant to continuing that stay until determination of the appeal which

15 has been lodged on behalf of the second and third defendants in respect of my judgment in *Goomboorian Transport Proprietary Limited v Hanson* [2018] QSC 135.

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There are competing undertakings offered.

In support of the stay, the second and third defendants undertake through their counsel:

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- (a) to maintain the undertakings provided by their counsel to this court on 19 June 2015;
- (b) until further order or agreement with the plaintiffs, not to deal with any of the funds held on their behalf in the Big Law/Lawyers trust account; and
- (c) that they will maintain the registration and insurance for the Mercedes-Benz A-Class motor vehicle (VIN WDD1 17343N154473) and will otherwise store it in a shed on their property and not use it.

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For their part, in resisting the interim stay application, the third and sixth plaintiffs offer these undertakings:

- 35 (a) that they will cause all amounts received by them pursuant to my order to be paid into the trust account of Griffith Hack Lawyers, to be held on trust by Griffith Hack Lawyers until disposition of proceeding number 7390 of 2018 in the Court of Appeal ("the appeal") or earlier order, but which amounts may be invested by Griffith Hack Lawyers on such terms as may be agreed in writing between the second and third defendants and the third and sixth plaintiffs; and
- 40 (b) that they will not until disposition of the appeal or earlier order, deal with or use the motor vehicle identified in paragraph 2 of the orders of the court dated 14 August 2018.

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Upon those undertakings, the third and sixth plaintiffs would submit that I should dismiss the application for stay.

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The principles governing an application for stay are not presently in dispute. Essentially, two questions need to be considered: first, whether there is a good arguable case on appeal; and, second, an examination of the balance of

disadvantage, which takes into account the disadvantage to the applicant for stay if a stay is not ordered, and any competing disadvantage to the respondent should the stay be granted.

- 5 Presently, we are dealing with an interim stay, and I am not persuaded there is any merit in ordering a change to the status quo that would obtain, consequent upon the undertakings offered by the third and sixth defendants, until I determine the complete argument for the stay application pending appeal.
- 10 I accept there is for the purposes of the interim stay a good arguable case on appeal. No contrary submission is put to me by counsel for the plaintiffs, although he reserved his position on that question in relation to the application for stay pending appeal.
- 15 No particular disadvantage is suffered by the third and sixth plaintiffs if I do not require the super funds to be realised, moneys to be transferred, motor vehicle to be moved to their possession and the sale of the family home. On the other hand, there is at least the very real prejudice to the second and third defendants if I require the family home to be sold, and there is a possibility, the value of which I am not
- 20 presently clear on, but no doubt that will become clear in full argument on the 24 August 2018, that the second and third defendants might suffer some real tax prejudice in the event that the asset that is presently held in superannuation funds is required to be converted into moneys not so held. Certainly, the assessment of the value of that asset and the potential of irretrievable prejudice is not, at least as the
- 25 argument presently strikes me, so obviously *de minimis* as to regard it as worthy of no consideration in the assessing of the balance.

It follows that the order that I am prepared to make at the moment is to grant the interim stay on the undertakings proposed by the second and third defendants. So

30 upon those undertakings I will order that:

1. The order of Bond J appointing statutory trustees for sale is not to take effect until further order of the Court.
2. Subject to (1), the orders made in the afternoon of 14 August 2018 be stayed
- 35 until 4 pm on 24 August 2018 or earlier order
3. The further argument on the application by the second and third defendants for stay be adjourned to be heard by Bond J at 10 am on 24 August 2018.
4. Costs of the application for stay be reserved

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I direct that –

- (a) the applicant second and third defendants provide any further affidavit material in support of their application and any modification to their written
- 45 submissions as they are advised to make by 4 pm on Friday, 17 August 2018; and
- (b) the respondent third and sixth plaintiffs file their material in reply to together with written submissions by 4 pm on 22 August 2018.