SUPREME COURT OF QUEENSLAND

CITATION:	*Runaway Bay Investments Pty Ltd as trustee for Runaway Bay Investments Unit Trust v GCB Constructions Pty Ltd and Ors* [2018] QSC 292
PARTIES:	**RUNAWAY BAY INVESTMENTS PTY LTD AS TRUSTEE FOR RUNAWAY BAY INVESTMENTS UNIT TRUST ACN 618 677 188** (Applicant) **v** **GCB CONSTRUCTIONS PTY LTD ACN 151 244 254** (First Respondent) **and** **SIMON WILSON ADJUDICATOR NO. J1123005** (Second Respondent) **and** **THE ADJUDICATION REGISTRAR, QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION** (Third Respondent)
FILE NO/S:	BS No 12765 of 2018
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	11 December 2018
DELIVERED AT:	Brisbane
HEARING DATE:	5 December 2018
JUDGE:	Lyons SJA
ORDER:	**I will hear from the parties as to the form of the order and as to costs.**
CATCHWORDS:	CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – OTHER MATTERS – where an adjudicator determined that an amount of $61,054.44 was to be paid to the builder – where no payment has been made – where an Adjudication Certificate has been obtained – where judgment has been entered in the District Court after making demand for the judgment amount – where an application was subsequently filed for the adjudicator's decision to be declared void – where the first respondent seeks an order that the disputed amount be paid into Court pending determination of the substantive application – where the substantive application is to be heard on 15 February 2019 –

where it is contended that the substantive application is analogous to a proceeding under s 31 of the *Building and Construction Industry Payments Act* 2004 (Qld) - where the applicant resists this application on the basis that it is unnecessary – whether an order should be made that the disputed amount be paid into Court – whether the substantive application is analogous to s 31 of the *Building and Construction Industry Payments Act* 2004 (Qld)

Building and Construction Industry Payments Act 2004 (Qld) s 29, s 30, s 31

Uniform Civil Procedure Rules 1999 (Qld) r 658

BRB Modular Pty Ltd v AWX Constructions Pty Ltd & Ors [2015] QSC 222

Filadelfia Projects Pty Ltd v EntirITy Business Services Pty Ltd [2010] NSWSC 473

Low v MCC Pty Ltd & Ors; MCC Pty Ltd v Low [2018] QSC 6

Northbuild Constructions Pty Ltd v Central Interior Linings Pty Ltd [2012] 1 Qd R 525

R J Neller Building P/L v Ainsworth [2008] QCA 397

Surfabear Pty Ltd v G J Drainage & Concrete Construction Pty Ltd [2009] QSC 308

Tombleson v Dancorell Constructions Pty Ltd [2007] NSWSC 1169

Wiggins Island Coal Export Terminal Pty Ltd v Sun Engineering (Qld) Pty Ltd & Anor [2014] QSC 170.

COUNSEL: D Whitehouse for the Applicant
M D Ambrose QC for the First Respondent

SOLICITORS: Holding Redlich for the Applicant
Thynne & Macartney for the First Respondent

Overview of the essential dispute

[1] In April 2017, the parties in this dispute entered into a contract for the construction of a three story restaurant building at Runaway Bay. Issues arose between the parties in relation to payment claims and ultimately an Adjudication Application was made pursuant to the provisions of the *Building and Construction Industry Payments Act* 2004 (Qld) ("BCIPA"). An adjudicator was appointed and on 5 November 2018 the adjudicator determined that an amount of $61,054.44 was to be paid to the builder.

[2] Despite obtaining an Adjudication Certificate, entering judgment in the District Court and making demand for the judgment amount, no payment has been made to the

builder. After judgment was entered, an originating application was filed seeking to have the adjudicator's decision declared void on the basis of jurisdictional error or denial of natural justice and for an order restraining enforcement or reliance on the affected parts of the decision.

[3] In this application, the builder now seeks an order pursuant to r 658 of the *Uniform Civil Procedure Rules* 1999 (Qld) ("UCPR") or the inherent jurisdiction of the Court, that the disputed amount be paid into Court pending determination of the substantive application which is to be heard on 15 February 2019. That application is resisted on the basis that it is unnecessary and that the enforcement of judgement should simply proceed in the usual way as there is no application on foot to enforce the District Court judgment.

The history of the proceedings

[4] This application is made by GCB Constructions Pty Ltd ("GCB"), who is the first respondent in the originating application brought by Runaway Bay Investments Pty Ltd as trustee for Runaway Bay Investments Unit Trust ("Runaway Bay").

[5] On 6 November 2018, the second respondent issued a decision pursuant to s 26 of the BCIPA (dated 5 November 2018) which determined that the investor, Runaway Bay, was to pay GCB the sum of $61,054.44 including GST, interest and 100% of the Adjudicator's fee. The due date for payment was 14 November 2018.

[6] On 15 November 2018, GCB obtained an Adjudication Certificate from the Queensland Building and Construction Commission in the sum of $72,392.10.

[7] On 16 November 2018, GCB obtained judgment in the District Court against Runaway Bay for the certified amount pursuant to s 31 of the BCIPA.

[8] On 19 November 2018, GCB's solicitors made demand on Runaway Bay's solicitors for the judgment amount.

[9] On 19 November 2018, Runaway Bay served its originating application in this proceeding. That originating application seeks orders for:

> 1. A declaration that parts of the Adjudication decision of the second respondent dated 5 November 2018 are void on account of jurisdictional error or a denial of natural justice;
>
> 2. The first respondent be restrained from enforcing or relying on the affected parts.

[10] Pursuant to an amended application filed on 28 November 2018, GBC made an application for orders that by 6 December 2019 the applicant lodge with the Registrar the sum of $72,392.10 (including GST plus interest calculated at 12% per annum from 16 November 2018 until 15 February 2019 when the matter is set down for a final hearing).

[11] Prior to the filing of the amended application on 28 November 2018, the solicitors for GCB requested that Runaway Bay agree to a payment into court. Such a request was refused.

[12] There is no doubt the court has power pursuant to r 658 of the UCPR to require a party to make a payment into court. That rule provides:

> "(1) The court may, at any stage of a proceeding, on the application of a party, make any order, including a judgment, that the nature of the case requires.
>
> (2) The court may make the order even if there is no claim for relief extending to the order in the originating process, statement of claim, counterclaim or similar document."

Does s 31(4)(b) of BCIPA apply?

[13] Section 31 of BCIPA deals with the filing of Adjudication Certificates as a judgment debt:

> "(1) An adjudication certificate may be filed as a judgment for a debt, and may be enforced, in a court of competent jurisdiction.
>
> (2) An adjudication certificate can not be filed under this section unless it is accompanied by an affidavit by the claimant stating that the whole or a part of the adjudicated amount has not been paid at the time the certificate is filed.
>
> (3) If the affidavit states that part of the adjudicated amount has been paid, the judgment is for the unpaid part of the amount only.
>
> (4) If the respondent commences proceedings to have the judgment set aside, the respondent—
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> (a) is not, in those proceedings, entitled—
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> (i) to bring any counterclaim against the claimant; or
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> (ii) to raise any defence in relation to matters arising under the construction contract; or
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> (iii) to challenge the adjudicator's decision; and
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> (b) is required to pay into the court as security the unpaid portion of the adjudicated amount pending the final decision in those proceedings."

[14] As the submissions by Counsel for Runaway Bay make clear, there is presently no interlocutory application before this court or the District Court that seeks to:

1. Set aside the District Court judgment;

2. Apply for a stay of enforcement of the District Court judgment; or

3. Apply for an interlocutory injunction restraining GBC from taking any steps to enforce an Adjudicator's decision pending the resolution of the originating application by Runaway Bay.

[15] Clearly then, the originating application is not a proceeding of the type envisaged by s 31(4) and Runaway Bay has not commenced proceedings to have the judgment set aside. Accordingly, the requirements of subsection 4(b), that payment into court is

required as security for the unpaid portion of the adjudicated amount pending the final decision, have not been triggered. Rather than being an application to set aside the judgment, the originating application seeks to have parts of the Adjudicator's decision declared void. In my view, this essentially has the same consequence; namely, that the whole or part of the judgment debt is no longer enforceable. GCB argues therefore that the application is analogous to a s 31(4) situation and that the same consequence should follow. That is, that there should be a payment into Court of the disputed amount.

[16] The distinction between an application for an Adjudicator's determination to be declared void and the kind of action referred to in s 31(4)(b), which is an application to have a judgment entered pursuant to such determination set aside, was discussed in *Surfabear Pty Ltd v G J Drainage & Concrete Construction Pty Ltd.*[1] In that case, a preliminary issue arose as to whether it was in fact an application within the meaning of s 31(4)(b) and whether the application should be dismissed for failure to pay into court as security the unpaid portion of the Adjudication amount pending the final decision. Martin J determined that the application was not an application pursuant to that section. His Honour held:

> "While the objective of BCIPA in ensuring that a person entitled to progress payments under a construction contract is able to receive such payments promptly is well established, those objectives do not override the plain and ordinary meaning of its provisions. Section 31(4)(b) makes express reference to "proceedings to have the judgment set aside" when requiring unpaid adjudicated amounts to be paid into court. Other types of proceeding, such as the application made in this case, do not fall within the ambit of that section. No payment into court is required in the present case and the present application need not be stayed."[2]

[17] As I have indicated, the current application is not an application pursuant to s 31(4)(b) and accordingly, there is no requirement that the payment into court is required pursuant to that section. The broader issue is whether, whilst not mandated by s 31(4)(b), the Court should nonetheless exercise its discretion and require payment into court pursuant to r 658 or the inherent jurisdiction of the Court. That broader question was not raised or considered in *Surfabear* which related to final relief and was not an interlocutory application.

The policy of the BCIPA

[18] Counsel for GCB concedes that the application brought by Runaway Bay does not fall within the parameters of s 31(4) and argues that this is no accident and the relief sought deliberately attacks the anterior step of the making of the decision rather than attacking the judgment on the basis that the decision is invalid. GCB argues, however, that Runaway Bay essentially seeks relief which is analogous to s 31(4) because it seeks to permanently restrain GCB from enforcing the adjudication decision. As judgment has already been obtained, it is argued that the relief sought is a direct attack on the enforcement of the judgment. Counsel argues that this strategy of attacking the adjudication decision while avoiding triggering the payment requirements of s 31(4) has been the subject of judicial comment and was referred to by Jackson J in *Low v*

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1 [2009] QSC 308.
2 Ibid at [42].

MCC Pty Ltd & Ors.[3] In that case, which was an application for an interlocutory injunction to enjoin enforcement of the adjudication decision, Jackson J stated the following:

> "In effect, s 31(4) requires that when an adjudication certificate has been filed as a judgment for a debt, and a respondent to a payment claim commences proceedings to have the judgment set aside, the respondent is required to pay into the court as security the unpaid portion of the adjudicated amount pending the final decision in those proceedings.
>
> Strictly speaking, the applicant's claim in proceeding BS11709 of 2017 does not seek an order to set aside the filed adjudication certificate as a judgment. That is explained by the fact that the claim antedates the adjudication certificates. Nevertheless, three points may be made.
>
> First, although the relief sought by the applicant by way of declaration and permanent injunction is not an order to set aside the judgment, it would have the same effect in substance as such an order. The purpose of s 31(4) is to require that a person who mounts a curial challenge to an adjudication decision and adjudication certificate that has been filed as a judgment to begin by securing payment of the amount to which the claimant is ostensibly entitled, by payment into court, so that if the proceeding is unsuccessful the claimant has an assurance of payment. **By way of analogy, it might be appropriate to require an applicant who seeks relief by way of declaration and injunction, in substance having the same effect as an order to set aside the judgment, to secure the payment ostensibly due to the successful claimant as an assurance of payment if the proceeding is unsuccessful, as part of the price of an interlocutory injunction to preserve the status quo until a decision upon the final hearing of the application.**"[4] (emphasis added)

GCB therefore submits that the same reasoning should apply in relation to this application, even where an interlocutory injunction is not sought. Counsel for GCB also submits that as the money is paid into court there would be no risk or prejudice to Runaway Bay in being able to recover the money should its application ultimately prove successful.

Should the payment into court be made?

[19] Counsel for Runaway Bay argues that it is unnecessary to make the orders sought in the absence of an application by GCB to prevent the enforcement of the District Court judgment and that this is not the appropriate forum to seek to enforce the adjudicator's decision. It is argued that GCB have already completed two of the three steps required to enforce the judgment entered in the District Court and it should complete that process rather than undertaking a concurrent process by way of this application.

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3 *Low v MCC Pty Ltd & Ors; MCC Pty Ltd v Low* [2018] QSC 6.
4 Ibid at [70] – [72].

[20] Counsel also seeks to distinguish a line of cases relied upon by Counsel for GCB including *BRB Modular Pty Ltd v AWX Constructions Pty Ltd & Ors,*[5] *Filadelfia Projects Pty Ltd v EntirITy Business Services Pty Ltd*[6] and *Tombleson v Dancorell Constructions Pty Ltd*[7] on the basis that those decisions involved interlocutory injunction applications which would have restrained the enforcement of an adjudication in a claimant's favour. Counsel argues, in particular, that the decision in *R J Neller Building P/L v Ainsworth*[8] is distinguishable as it was an application to set aside or stay an enforcement warrant obtained after the filing of the adjudication certificate which became the judgment of the Court. Whilst counsel has argued that no such application has been made here, and the decision is therefore distinguishable, I note that Ainsworth had argued that if he was ultimately successful, he may not recover the adjudicated amount from Neller if he was required to pay. That application was unsuccessful before the primary judge on the basis that that a stay of the judgment based on the adjudication would defeat the plain policy of the Act. I also note that on appeal, Keane JA reiterated that the process of adjudication under the Act established a speedy and effective means of ensuring cash flow to builders. I also accept that the decision in *Wiggins Island Coal Export Terminal Pty Ltd v Sun Engineering (Qld) Pty Ltd & Anor*[9] is not strictly analogous to the present case, as Runaway Bay has not made an application for interlocutory relief.

[21] Similarly, Counsel argues that Jackson J's decision in *Low v MCC Pty Ltd & Ors*[10] involved an application for an interlocutory injunction to restrain enforcement of an adjudicator's decision filed as judgments in the District Court. This was in circumstances where enforcement warrants had issued. Reliance is placed in particular on the following observations by his Honour:

> "By way of analogy, it might be appropriate to require an applicant who seeks relief by way of declaration and injunction, in substance having the same effect as an order to set aside the judgment, to secure the payment ostensibly due to the successful claimant as an assurance of payment if the proceeding is unsuccessful, as part of the price of an interlocutory injunction to preserve the status quo until a decision upon the final hearing of the application."[11]

[22] Accordingly, Counsel essentially argues that the absence of an application for an interlocutory injunction to restrain the enforcement of the judgement is a significant fact and that reliance cannot therefore be placed on cases where an injunction was sought.

[23] There are numerous decisions of this Court, however, which clearly articulate that the scheme of the BCIPA is to provide a legislative entitlement to be paid for work which is undertaken pursuant to a construction contract together with a regime whereby a

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5 [2015] QSC 222.
6 [2010] NSWSC 473.
7 [2007] NSWSC 1169.
8 [2008] QCA 397.
9 [2014] QSC 170.
10 *Low v MCC Pty Ltd & Ors; MCC Pty Ltd v Low* [2018] QSC 6.
11 Ibid at [72].

properly obtained adjudication decision can be enforced against a respondent. As White JA noted in *Northbuild Constructions Pty Ltd v Central Interior Linings Pty Ltd:*[12]

> "To that end the *Payments Act* established a statutory based system of rapid adjudication for the interim resolution of "payment on account" disputes involving building and construction work contracts. There can be no contracting out of *Payments Act* entitlements. The adjudication is conducted by an independent adjudicator with relevant expertise. If the decision of the adjudicator in whole or in part favours the applicant for a progress payment, the respondent to that claim is required to pay the specified amount directed by the adjudicator to the claimant. Decisions by the adjudicator are enforceable in any court of competent jurisdiction on the filing of an adjudication certificate which will operate as a judgment debt. This rapid adjudication does not extinguish a party's ordinary contractual rights to obtain a final resolution of a payment dispute by a court or tribunal relevantly endowed with jurisdiction to hear such a dispute. But, importantly, in order to effect its purpose of a quick resolution of disputes and to maintain cash flow, the *Payments Act* provides for only limited recourse to the courts in respect of the adjudication."[13]

[24] An analysis of the scheme and indeed the procedure established by the BCIPA regime makes it manifestly clear that it is a *payments regime.* Section 29 of the Act requires a respondent to pay an adjudicated amount before a relevant date. Section 30 then provides that if the respondent fails to pay the whole or any part of the adjudicated amount then the claimant may ask the Registrar to provide an adjudication certificate. Section 31 then provides that an adjudication certificate can be filed as a judgment for a debt and may be enforced in a court of competent jurisdiction. Counsel for GCB argues that the policy of the BCIPA for payment into court is that the price to be paid by a party challenging an adjudication decision is to pay monies into court as security for the unpaid portion of any adjudicated amount. In this regard, I note the decision of Bond J in *BRB Modular Pty Ltd v AWX Constructions Pty Ltd & Ors*[14] where he considered an argument that was put to him in the following terms:

> "The argument was:
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> (a) The Act contemplates that a party who wishes to contend that an adjudication determination is void for jurisdictional error may so contend, and if the other party has already converted the adjudication determination into a judgment, the party contending for jurisdictional error could bring an application for a declaration that there was jurisdictional error and seek to set aside the judgment.
>
> (b) Section 31(4) would, in those circumstances, require that person to pay moneys into Court.
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> (c) That gives an indication of the policy of the Act, namely the price to be paid by the moving party to have a Court hear and determine a

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12 [2012] 1 Qd R 525.
13 Ibid at [53].
14 [2015] QSC 222.

challenge of that nature is to pay monies into Court as security for the unpaid portion of any adjudication amount.

(d) Why - so it is put - would the policy of the Act be any different simply because the dispute comes before the Court at a stage antecedent to the adjudication outcome being converted into a judgment debt?

I find the argument compelling, and I note that support is found for it in observations made by:

(a) McDougall J in *Filadelfia Projects Pty Limited v EntirITy Business Services Pty Ltd* [2010] NSWSC 473 at [11]:

> *[11] In the ordinary way injunctive relief would be granted on condition that the amount in dispute, including the cost of the adjudication and some allowance for interest, be paid into Court pending a final resolution of the dispute. That is generally done firstly where s 25(4) of the Act applies, simply because that is a requirement 40 of the section. Where (as here) s 25(4) does not apply in terms (and it does not apply in terms because there has been no adjudication certificate, and hence no judgment for a debt) the Court nonetheless, taking into account the clear objects of the Act and its underlying policy, generally orders payment into Court by analogy with s 25(4).*

b) Hammerschlag J in *Nazero Group Pty Ltd v Top Quality Construction Pty Ltd* [2015] NSWSC 232 at [42]:

> *[42] The policy of the Act, as reflected in s 25(4)(b), is that a claimant is to be given protection of payment into court when a respondent seeks, whether by injunction or otherwise, to inhibit the claimant's enforcement of an adjudication in its favour. Pendente lite, Top Quality is being held out of payment, with the risk attendant on delay, notwithstanding the statutory obligation on Nazero to pay. It is open to Top Quality to file the adjudication certificate, in which event Nazero would have little option but to seek to have the judgment set aside to protect its position, in which event, s 25(4)(b) of the Act would mandate payment into court. Here, by happenstance, the section does not apply because the further step has not yet occurred. Top Quality would have to take that step to enforce its statutory right to payment. The only difference is that these proceedings have intervened. The policy of the Act is not served by removing Top Quality's protection pending determination of Nazero's challenge even though s 25(4)(b) of the Act does not apply in terms.*

Lesser but still some support for the argument is found in the decision of Henry J in *Isaac Regional Council v Civil Mining and Construction Pty Ltd & Ors* [2014] QSC 105 at [11]-[12]. His Honour acknowledged the existence of a policy of the nature of that for which the applicant has argued, but, did so in the context of rejecting an argument that it was

> necessary to require payment in. In other words, his Honour granted an injunction without requiring the adjudicated sum to be paid into Court.
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> The result is that I do not think the issue of policy is a factor strongly against the application for injunction as contended for by the first respondent."[15]

[25] It is unnecessary to determine whether or not Runaway Bay has instituted these proceedings with the specific intention of circumventing the requirements of s 31(4)(b) and I make no such finding. It is nonetheless clear in my view that Runaway Bay has mounted what Jackson J has termed a 'curial challenge' to the adjudication decision and the adjudication certificate that has been filed as judgment. As Bond J noted, the decisions of *Filadelfia Projects Pty Ltd v EntirITy Business Services Pty Ltd*[16] and *Nazero Group Pty Ltd v Top Quality Construction Pty Ltd*[17] support the view that the policy of the BCIPA legislation is that a claimant builder is to be given protection of payment into court when a respondent seeks, whether by injunction or otherwise, to inhibit the claimant's enforcement of an adjudication in its favour. In this regard, I note that the decisions in *Filadelfia* and *BRB Modular* involved interlocutory injunction applications, *Nazero* did not. *Nazero* related to an application which sought an order for payment into court of the outstanding adjudicated amount pending final determination or a stay of the proceeding until such payment was made.

[26] It is also important to remember the underlying principles articulated by Bergin J in *Tombleson* and endorsed by Hammerschlag J in *Nazero*, that the Court is cautious to ensure not only justice between the parties but that legislation is not circumvented. In *Tombleson,* Bergin J ordered that money be paid into Court in circumstances where an interlocutory injunction was not sought. Her Honour held as follows:

> "A plaintiff against whom a judgment has been entered who brings proceedings seeking to prevent a party from relying on that judgment without seeking to set aside the judgment, knows that s 25(4) of the Act requiring security will not be triggered. However, the Court is not only cautious to ensure justice between the parties, but also to ensure that the legislation under which this application is brought is not circumvented."[18]

[27] I also endorse Hammerschlag J's approach in *Nazero,* with respect to the interpretation of the NSW equivalent to s 31(4) and the argument that the discretion of the Court was narrowed. His Honour held that no such implication arose and that the presence of that section in the Act "gives rise to no implication that the discretion of the Court to make the kind of orders sought here is narrowed. If anything, the fact that discretion is removed only in the particular circumstances where the section applies, indicates that there is discretion in all other circumstances."[19] His Honour held:

> "The starting point in the exercise of the discretion to make the orders sought here is the general policy aims of the Act, and specific aims of

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15 Ibid at 12 – 13.
16 [2010] NSWSC 473.
17 [2015] NSWSC 232.
18 *Tombleson v Dancorell Constructions Pty Ltd* [2007] NSWSC 1169 at [18].
19 *Nazero Group Pty Ltd v Top Quality Construction Pty Ltd* [2015] NSWSC 232 at [41].

> particular pertinent sections. A general policy aim of the Act is to give enforceable rights to progress payments. Another is to ensure the speedy and effective determination of disputes about them. Specific provisions of the Act aim to put a claimant who has the benefit of an adjudication in its favour in a strong position, so much so that it is entitled to automatic judgment."[20]

[28] In determining this application it is important to remember, as Hammerschlag J noted in in *Nazero,* that an order to pay the adjudicated amount into Court pending final determination is purely interlocutory and procedural. Furthermore, the Court has power to make such orders as part of its inherent power to control its own processes and "The Court possesses inherent power to stay proceedings and an incidental power to control and to ensure the proper and fair use of its jurisdiction."[21]

[29] In this regard, I consider that there is some force in the view expressed in that decision, that because the question of whether there should be a payment into Court requires the exercise of a discretion, then regard must be had to the particular circumstances of the case. In this regard I accept the force of GCB's submission that there is no evidence that there is any prejudice or hardship to Runaway Bay in them paying the amount sought. I also accept that there is evidence of the difficulty of enforcing the judgment by reason of Runaway Bay's failure to comply with the provision of a statement of financial position in the manner in which it has structured its affairs.

[30] In this regard I also note the affidavit of Pravneel Chaudhary, a solicitor employed by the solicitors for GCB, which provides that despite the fact that a statement of financial position pursuant to r 807(3) of the UCPR was due by 4 December 2018, no such statement has been provided. I also note no payment of the judgment sum has been made. In accordance with rr 808 and 812 of the UCPR, GCB may apply to the court for an enforcement hearing to request the court issue a subpoena to Mr Brent Freeman, who is the sole director and secretary, to appear and provide information as to the financial circumstances of Runaway Bay. At the subsequent hearing, Mr Freeman can be examined about the assets of Runaway Bay and its means of satisfying the debt. I accept that such a process may take some time and may involve some additional costs. Mr Chaudhary also swears that on 3 December 2018 he undertook a land and property search in Queensland on the applicant trustee company and that search provided no results. I accept therefore the force of the submission that may well take some time therefore for GCB to identify assets against which the judgment can be enforced.

[31] I also accept GCB's submissions that in the circumstances of this case, GCB is placed in the invidious position of either expending additional resources to enforce the judgment which may be rendered nought if the originating application is successful, or delaying any enforcement to await the outcome of the originating application. That application will not be heard until mid-February 2019 with judgment to follow inevitably some time later.

[32] Accordingly, in these particular circumstances, I consider that Runaway Bay should lodge with the Registrar of the Court the sum of $72,392.10 (including GST) plus interest at 12% per annum from 16 November 2018 to 15 February 2018.

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[20] Ibid at [40].
[21] Ibid at [31].

[33] I will hear from the parties as to the form of the order and as to costs.