

SUPREME COURT OF QUEENSLAND

CITATION: *Sanrus Pty Ltd & Ors v Monto Coal 2 Pty Ltd & Ors (No 10)*
[2019] QSC 297

PARTIES: First Plaintiffs: **SANRUS PTY LTD AS
TRUSTEE OF THE QC
TRUST ACN 097 049 315**

AND

Second Plaintiffs: **EDGE DEVELOPMENTS
PTY LTD AS TRUSTEE OF
THE KOWHAI TRUST ABN
26 010 309 529**

AND

Third Plaintiffs: **H&J ENTERPRISES (QLD)
PTY LTD AS TRUSTEE OF
THE H&J TRUST ACN 077
333 736**

AND

First Defendants: **MONTO COAL 2 PTY LTD
ACN 098 919 414**

AND

Second Defendants: **MONTO COAL PTY LTD
ACN 098 393 072**

AND

Third Defendants: **MACARTHUR COAL
LIMITED ACN 096 001 955**

FILE NO/S: SC No BS8609/07

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED EX TEMPORE ON: 29 November 2019

DELIVERED AT: Brisbane

HEARING DATE: 29 November 2019

JUDGE: Bond J

ORDER: **The orders of the Court are that:**

- 1. The plaintiffs' claim against the third defendant is dismissed.**

2. **The defendants' oral application for judgment in respect of the plaintiffs' claims against the second defendant is adjourned to a date to be fixed.**
3. **The question as to the costs order which should be made in respect of order 1 be dealt with in oral argument commencing 9 December 2019.**

COUNSEL: P L O'Shea QC for the plaintiffs
A M Pomeranke QC with A C Stumer for the defendants

SOLICITORS: Holding Redlich for the plaintiffs
Allens for the defendants

BOND J: By an order I made earlier today, I granted the plaintiffs leave to amend the further amended consolidated statement of claim in this proceeding. The necessity for amending the consolidated statement of claim arose consequent upon certain claims no longer being pressed, as first announced by senior counsel for the plaintiffs in court on 22 November 2019.

Briefly, that which may be characterised as the plaintiff's primary claim for damages is no longer pressed and amendments have been made to fulfil that. Further, no claim of any nature is being pressed against the third defendant and amendments have been made to fulfil that. Finally, no damages claim is pleaded against the second defendant although allegations that the second defendant breached its contract are still pleaded.

Consequent upon those amendments having been formalised by my granting leave to amend and immediately thereafter allowing the plaintiffs to file in court an amended pleading, oral application was made on behalf of the second and third defendants for judgment.

So far as the third defendant is concerned, the basis of that application is obvious from what I've already said.

So far as the second defendant is concerned, technically the proposition is that the pleading now articulates only a claim for relief as against the first defendant. There is no contention that nominal damages are claimed against the second defendant consequent upon the alleged breaches of contract by it. There being no extant claim for relief against the second defendant, the proposition advanced on its behalf was that there now should be judgment in its favour. Senior counsel for the plaintiffs identified that the failure to advance a claim for relief against the second defendant was an oversight. In the present context, I am not minded to give judgment in favour of the second defendant in light of that articulation.

I agree with the submission made by senior counsel for the defendants that it is passing strange that in a case of this nature, a claim is prosecuted only for nominal damages against a party. It is apparent that there will be some further amendment pursued by the plaintiffs in relation to the statement of claim. Quite apart from that, there needs to be amendments to the claim in this proceeding.

The course that I will take in response to the oral application for judgment is as follows. I make these orders:

- (1) The plaintiffs' claims against the third defendant are dismissed.
- (2) The defendants' oral application for judgment in respect of the plaintiffs' claims against the second defendant is adjourned to a date to be fixed.

- (3) The question as to the costs order which should be made in respect of order 1 be dealt with in oral argument commencing 9 December 2019.