

SUPREME COURT OF QUEENSLAND

[2002] QSC 166
File No 2454 of 2001

BETWEEN:

SUZANNE MARIE STEPHENS

Plaintiff

AND:

WILLIAM ROBERT ELL

First Defendant

AND:

**PROPELL DEVELOPMENTS PTY LTD
(ACN 000 976 545)**

Second Defendant

AND:

**ERRENMORE PTY LTD
(ACN 010 567 745)**

Third Defendant

AND:

**ECOVALE PTY LTD
(ACN 003 855 061)**

Fourth Defendant

AND:

**WALLABY HOTEL (MUDGEERABA) PTY LTD
(ACN 002 430 775)**

Fifth Defendant

AND:

**BAROB PTY LTD
(ACN 001 024 915)**

Sixth Defendant

AND:

**TERESINA PTY LTD
(ACN 001 666 888)**

Seventh Defendant

AND:

**KANNAWICK PTY LTD
(ACN 079 906 451)**

Eighth Defendant

AND:

**HOTEL GRAND CHANCELLOR (BRISBANE) PTY LTD
(ACN 061 467 597)**

Ninth Defendant

AND:

**LEDA HOLDINGS PTY LTD
(ACN 001 404 557)**

Tenth Defendant

AND:

**LEDA COMMERCIAL PROPERTIES PTY LTD
(ACN 008 613 447)**

Eleventh Defendant

MOYNIHAN J – REASONS FOR JUDGMENT

DELIVERED ON: 12 June 2002

HEARING DATE: 6 March 2002

ORDER: **(a) There be no order as to the cost of the application of 20 November 2001;**

(b) The application for the disclosure of documents

- tax returns
- balance sheet and profit and loss statements; and
- cash payments books

for the financial years commencing 1995 be adjourned to a date to be fixed.

(c) The matter be placed on the Supervised Case List, and

(d) There otherwise be no order as to costs.

CATCHWORDS: COSTS – outstanding costs from an application brought by the plaintiff— whether costs of the application be ordered.

COSTS – disclosure – where plaintiff seeks disclosure of financial documents – whether disclosure should be granted.

COSTS – Property Law Act 1974 – s 341 – where party to proceedings bears their own costs unless the Court is satisfied that there are circumstances justifying it making an order – matters Court to take into consideration – whether this case will justify making an order under s341.

Penfold v Penfold (1979-80) 144 CLR 311

Property Law Act 1974 ss 35, 341(1)(2)(3)(4).

COUNSEL: T D North SC with him P W Hackett for the applicant
T Kirk SC with him R Jones for the defendant

SOLICITORS: Colwell Wright for the applicant
Hickey Lawyers for the defendants

- [1] These reasons dispose of:-
1. The outstanding costs issues following an order on 6 March 2002 dismissing the plaintiff's application in respect of an undertaking of 22 December 2000, and the plaintiff's applications for a complying financial statement and further and better particulars. I published reasons for those issues on 6 March 2002.
 2. It also deals with the plaintiff's application for the disclosure by the defendants' of the following records for financial years commencing from 1995.
 - (a) Tax Return;
 - (b) Balance Sheet and Profit and Loss Statements; and
 - (c) Cash Payments Books.
 3. The plaintiff's application is brought in a claim based essentially on the de facto relationship provision of the *Property Law Act 1974* (the Act) as supported by allegations of a constructive trust. An application for the adjustment of property interests may be made under the Act whether or not an application or another remedy for relief has been made; see s35.
 4. Section 341(1) and (2) of the Act and to the effect that a party to proceedings under the Act bears their own costs unless the Court "is satisfied that there are circumstances justifying it making an order". Section 341(3) provides that the Court may make an order at any stage of the proceeding and apparently applies in respect of interlocutory matters.
 5. I should have thought that from the terms of the section and without it being necessary to resort to the decision of the High Court in *Penfold v Penfold* (1979-80) 144 CLR 311 that is a general rule yielding to the circumstances of a particular case justifying the order. (rule that the party bears their)
 6. Section 341(4) requires that in considering whether there are circumstances justifying departure from the general rule the court must consider the following matters-
 - (a) the income, property and financial resources of each of the parties;
 - (b) whether any party has legal aid and the terms of the legal aid;
 - (c) the conduct of each of the parties in relation to the proceeding, including, for example, conduct about pleadings, particulars,

- disclosure, inspection, interrogatories, admissions of facts and production of documents;
- (d) whether the proceeding results from a party's failure to comply with a previous order made under this part;
 - (e) whether any party has been wholly unsuccessful in the proceeding;
 - (f) whether any party made an offer to settle under the *Uniform Civil Procedure Rules* 1999 and the terms of the offer;
 - (g) any fact or circumstance the court considers the justice of the case requires to be taken into account.

Subsection 4(b), (e) and (f) do not apply here. As far as subsection 4(a) is concerned it may be accepted that the defendants income, property and financial resources considerably outweigh the plaintiff's.

Subsection 4(c) and (d) may be considered together. They seem to me irrelevant in that the orders of 6 March 2002 resolved money issues of the kind referred to in those provisions in the plaintiff's favour and others in the defendant's. There is room for differing views of the extent of each parties conduct or failure but this does not in my view warrant a departure from the general rule. I'm not persuaded there is any other fact or circumstance justifying departure from the general rule.

- 7. So far a disclosure is concerned orders were made on the 26 April 2002 for the timetabled exchange of narrative statements dealing with specified issues, for limited disclosure not as extensive as that sought to affect the closure of pleading and for a timetable to exchange of proposed directions for the future conduct of the matter.
- 8. In my view it is appropriate to determine issue of further disclosure in the context of the steps provided for there; concluding with the filing of the plaintiff's reply and of the proposals for further progressing the action to resolution.
- 9. I order and direct:-
 - (a) there be no order as to the cost of the application of 20 November 2001;
 - (b) the application for the disclosure of documents specified above be adjourned to a date to be fixed;
 - (c) the matter be placed on the supervised list; and
 - (d) there otherwise is no order to costs.