

SUPREME COURT OF QUEENSLAND

[2002] QSC 170
File No 9149 of 2002

BETWEEN:

MERRIN ELIZABETH WATERHOUSE

Plaintiff

AND:

SHERIDAN MAREE POWER

Defendant

MOYNIHAN J – REASONS FOR JUDGMENT

DELIVERED ON: 12 May 2002

HEARING DATE: 10 May 2002

ORDER:

1. **The plaintiff's claim is dismissed**
2. **the Plaintiff pay the defendant's costs of and incidental to the proceedings including any reserved costs, on a standard basis up to 7 November 2001;**
3. **the plaintiff pay the defendant's costs of and incidental to the proceedings, including any reserved costs, on an indemnity basis from 7 November 2001;**
4. **the defendant's costs in accordance with paragraphs 2 and 3 be agreed or failing agreement assessed.**
5. **Direct the he plaintiff transfer to the defendant all her right, title and interest in the Ford Courier Utility registered number VTZ797 to the plaintiff and ececute and deliver to the defendant's solicitors within 14 days from the date of this order all documents necessary to effect the transfer of registration of the vehicle. The defendant bear any stamp duty, government fees and charges associated with the transfer.**
6. **Direct in terms of paragraph 5 that the amount of \$13700 be set off against the payment of costs ordered in paragraphs 2 and 3.**
7. **Direst that the nett proceeds of the sale of the Chillingham property be disbursed as follows:-**
 - (a) **The sum of \$14, 797.49 be paid to the defendant;**

(b) The balance of \$14,797.49 is to be paid into the trust account of Denise Maxwell, Solicitor to be disbursed as follows:-

- i) in payment to the defendant of the defendant's costs pursuant to paragraphs 2 and 3;**
- ii) Any balance left after the defendant's costs have been paid has to be paid to the plaintiff.**

CATCHWORDS: COSTS – costs of proceedings.

Costs – where jointly owned vehicle – where there are nett proceeds from the sale of a jointly owned property.

Paraklo Pty Ltd v E Redmond ans Co Pty Ltd (1983) QDR 684

Molier v Van Wik (1980) LFLC

COUNSEL: Mr. P. Kronberg for the plaintiff
Ms. K.E. Downes for the defendant

SOLICITORS: Watts & Company for the plaintiff
Denise Maxwell – Solicitor for the defendant

Introduction

- [1] On 10 May 2002 I published my reasons in this action and gave directions for written submissions in respect of the form of final orders and as to costs those submissions have now been received and the matter can be disposed of.
- [2] It is accepted that the following orders are appropriate:-
 - 1. the plaintiff's claim is dismissed;
 - 2. the plaintiff pay the defendants costs of and incidental to the proceedings, including any reserved costs, on a standard basis up to 7 November 2001;
 - 3. the plaintiff pay the defendants costs of and incidental to the proceedings, including any reserved costs, on an indemnity basis from 7 November 2001;
 - 4. the defendants costs in accordance with paragraphs 2 and 3 be agreed or failing agreement assessed;
- [3] There are two other issues to be disposed of. The first relates to a jointly owned motor vehicle which has been in the possession of the defendant. It has a value of \$24,000. The second issue is as to the position of the nett proceeds from the sale of a jointly owned property at Chillingham which have been held in a solicitors trust account pending the resolution of these proceedings.
- [4] So far as the motor vehicle is concerned it has be borne in mind that the defendant has had the use of the vehicle since the separation which founded the institution of these proceedings. I'm inclined to accept that the most practical way of dealing

with this situation is to set off the value of her half share and to account a total of \$13,700 against the costs the plaintiff has been ordered to pay under paragraphs 2 and 3 above. The nett proceeds of the sale of the Chillingham property (\$14,797.49) are held in a solicitors trust account pending the resolution of the action.

- [5] The defendant seeks an order that her half share be paid to her and in effect a charge on the plaintiff's half share to secure the costs orders. The plaintiff opposes this order on the basis that it is effectively an injunction restraining the plaintiff from receiving the benefit of her presently vested asset and gives the defendant a priority over the plaintiffs unsecured creditors *Paraklo Pty Ltd v E Redmond and Co Pty Ltd* (1983) QdR 684 at 607 is cited in support. Paraklo is concerned with the extent of the court jurisdiction to grant a *mareva injunction* affecting a form of pre-trial attachment of money and the principles there considered to appear to have no application here. On the other hand *Molier v Van Wik* (1980) LFLC 90-91 cited by the defendant is authority for the proposition that the inherent power of the court to give effect to orders allows an order such as that sought by the defendant to be made. If I therefore order as follows:-
1. the plaintiff's claim is dismissed;
 2. the plaintiff pay the defendants costs of and incidental to the proceedings, including any reserved costs, on a standard basis up to 7 November 2001;
 3. the plaintiff pay the defendants costs of and incidental to the proceedings, including any reserved costs, on an indemnity basis from 7 November 2001;
 4. the defendant's costs in accordance with paragraphs 2 and 3 be agreed or failing agreement assessed.
- [6] The plaintiff transfer to the defendant all her right, title and interest in the Ford Courier Utility registered number VTZ797 to the plaintiff and execute and deliver to the defendants solicitors within 14 days from the date of this order all documents necessary to effect the transfer of registration of the vehicle. The defendant bear any stamp duty, government fees and charges associated with the transfer.
- [7] The plaintiff is entitled to set off against the payment of costs ordered in paragraphs 2 and 3 the sum of \$13,700 against the payment of costs ordered in paragraphs 2 and 3 hereof.
- [8] The nett proceeds of the sale of the Chillingham property be disbursed as follows:-
- (a) the sum of \$14,797.49 be paid to the defendant;
 - (b) the balance of \$14,797.49 is to be paid into the trust account of Denise Maxwell, Solicitor to be disbursed as follows:-
 - i. in payment to the defendant of the defendants costs pursuant to paragraph 2 and 3;
 - ii. any balance left after the defendant's costs have been paid has to be paid to the plaintiff.