

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

No S5572 of 2004

IN THE MATTER OF MULTIPULSE PTY LTD
(IN LIQUIDATION) ACN 090 130 046

WILLIAM BALFOUR RANGOTT

Applicant

and

WARWICK MARLER

First Respondent

and

MATTHEW LAMBERT

Second Respondent

BRISBANE

..DATE 12/07/2004

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: This was the hearing of an application by two directors of a company, Multipulse Proprietary Limited (in liquidation), to discharge summons for examination of those directors and to set aside the order of the Senior Deputy Registrar ordering a public examination. The respondent to the application is the liquidator of the company.

There is no suggestion that the application for examination was not correctly made or ordered under rule 11.2 or 11.3 of the Corporations Rules. Discharge of such an examination summons must be considered in accordance with rule 11.5.

Under that rule, a person who is served with an examination summons may apply to the Court for an order discharging that summons but must do so within three days after service of the summons. It was conceded that the Court has the power to extend the time and the fact that this application was not made within the appropriate time would not be fatal.

However, it was argued that the applicants have not complied with rule 11.5(3) that as soon as practicable after filing the interlocutory application seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory application and the supporting affidavit not only on the person who applied for the examination, as has been done in this case, but also the Australian Securities and Investment Commission. That has not been done in this case. ASIC has expressed an interest in this examination and, in my view, it would be inappropriate to discharge the order without service

on ASIC and without giving ASIC, therefore, the opportunity to be heard.

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Accordingly, I refuse the application to discharge the summons or to set aside the orders for public examination.

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Orders were also sought, in particular, when this was the subject of oral submissions, that the Court give directions as to the documents of connected entities to be provided pursuant to the summons. I was satisfied, after hearing submissions by counsel on behalf of the liquidator, that all of the documents in the possession or control of either of the respondents to the summons which relate to the affairs, as defined in the Corporations Law, of the connected entities, as also defined in the Corporations Law, are relevant to the liquidator's inquiries and that, therefore, the summons in its present terms should stand.

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The application also sought an order that the examination of Warwick Marler, one of the relevant directors, be adjourned until on or after 28 July 2004. That application was granted by me in the circumstances. There is no suggestion that Mr Marler will not attend to be examined or that he intends to avoid being examined, the only question is of the time when he is examined.

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He was served with the summons for public examination on 5 July 2004. It required him to attend at the Magistrates Court on 14 July 2004 for examination. The difficulty with that

date was that, in January this year, Mr Marler's wife and
shortly thereafter Mr Marler together booked a trip overseas
for the purposes of a holiday to celebrate an important
anniversary to them both. Mrs Marler's ticket was purchased
on Frequent Flyer points and cannot, at this late stage, be
changed without significant financial loss. Because of the
arrangements that have been made, I accept that Mrs Marler
would be unwilling to travel without her husband.

That trip has been in place for some time and, as I have said,
it could not be suggested that it was arranged to avoid Mr
Marler's obligations and was of course made with complete
unawareness of any necessity that might arise to attend at
Court. Mr Marler attended at Court personally to give
evidence and it seemed to me a proper exercise of my
discretion to allow him to proceed on his trip which has been
booked for today.

It seems to me that the prejudice to the liquidator is
ameliorated by the fact that the other director, Mr Lambert,
is not excused from attending and there has been no excusal of
the obligation to produce the many documents which are listed
in schedule A to the summonses.

In the application, there were also sought orders with regard
to the presence of the liquidator's solicitors because of a
potential conflict of interest they might have in the
examination. The applicants' solicitor has been reassured
about the ethical duties of solicitors and has reassured

himself by the fact that counsel will be appearing at that examination who is well aware of those matters and whose ethics and reputation is beyond doubt. In those circumstances, no further argument took place as to the question of the presence of those solicitors.

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I should perhaps mention that the matters referred to in the affidavit material do raise matters that will have to be keenly considered by the solicitors for the liquidator in accordance with their ethical duties to the Court.

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As a result, the application is dismissed except in so far as the examination of Warwick Leslie Marler is adjourned until on or after 28 July 2004, to be brought on by the liquidator or the Australian Securities and Investments Commission serving on the solicitors for Mr Marler a notice giving not less than 8 days' notice of the adjourned hearing date.

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HER HONOUR: I will order that the applicants pay the respondent's costs of the applications at the standard rate to be assessed.

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HER HONOUR: Any of the liquidator's costs thrown away by the adjournment are reserved.

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