

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ROBIN A/J

No 8924 of 2006

@1 INVESTMENTS PTY LTD

Applicant

and

JOHN GILLMEISTER

Defendant

BRISBANE

..DATE 17/11/2006

JUDGMENT

HIS HONOUR: Upon the respondent by his counsel undertaking to commence within 14 days a claim in respect of the debt referred to in his statutory demand dated 27 September 2006 and served on the applicant on 28 September 2006, I order that the statutory demand be set aside conditionally on the applicant having paid into Court the amount of the demand, being \$268,800 and further amount of \$9,240 for interest, within 14 days.

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I order that costs be costs in the cause in the proceeding to be instituted by the respondent.

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MR MORGAN: I just thought of one factual possibility that might arise and that might be that

HIS HONOUR: Well, I should get out the original reply, anyway, in case it - I'll certainly do that.

MR MORGAN: There was just one factual circumstance I envisaged. The real dispute in the matter as I understand it, was really going to be over 30,00 for the GST component.

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HIS HONOUR: That's right. Well, I haven't said a claim in this Court.

MR MORGAN: Yes.

HIS HONOUR: And that's - yes. Or-----

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MR MORGAN: It might only be a District Court claim or even a Magistrates Court claim necessary to resolve the - there's something like 22,000 in rent on one side, I understand, and something like 30,000 in the GST component on the other, so it might really be quite a small claim. I just-----

HIS HONOUR: So you'd like some way of reducing the condition-----

MR MORGAN: Just so that my friend isn't bound to commence in this Court.

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HIS HONOUR: All right.

MR MARTIN: No, no, I think your Honour has that claim so we can issue-----

MR MORGAN: Or for the 278.

MR MARTIN: As long as it's a claim in one of the three Courts----- 1

HIS HONOUR: A claim in any Court.

MR MORGAN: Yes.

MR MARTIN: Yes. I understood it - we've got a choice as to where we sue and the cause of action as long as it's - it's in relation to the debt. 10

MR MORGAN: Yes.

HIS HONOUR: Well, I can refine the payment in - perhaps by putting in words like-----

MR MARTIN: I think my learned friend-----

HIS HONOUR: "Except to the extent the payment has otherwise been made to the respondent". Something like that. 20

MR MORGAN: Or, "Except as otherwise agreed between the parties".

HIS HONOUR: Yes. Presumably your client will be realistic. If he gets \$268,000, he's not going to insist that be paid into Court again.

MR MARTIN: If it's paid to us unconditionally. 30

HIS HONOUR: Yes.

MR MARTIN: Well-----

HIS HONOUR: But it'd be paid to get the boat.

MR MARTIN: Mmm.

HIS HONOUR: And you'll have a fight about the GST and the rent. 40

MR MARTIN: Well, can I say this, if your Honour makes those orders, that doesn't then stop the parties from walking out of this Courtroom now and resolving part or all of the proceedings.

HIS HONOUR: Well - and I've put liberty to apply in as well.

MR MARTIN: Yes. And there's no need to come back and the whole matter goes away if the parties sensibly resolve the matter. 50

HIS HONOUR: Yes. It's got to be right, Mr Morgan, hasn't it?

MR MORGAN: Yes.

HIS HONOUR: And this will all be transcribed.

MR MORGAN: Yes. I just didn't want my client to still have to pay - say, for example, some partial compromise.

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HIS HONOUR: Yes. You don't want an officious Registry clerk - well, I don't know what the Registry clerk could do. It's not as though he can enter judgment.

MR MARTIN: Yes. Your Honour, can I say this.

HIS HONOUR: I suppose he could refuse to stay the order. That's the problem, isn't it? Refuse to stay the statutory demand to set aside.

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MR MARTIN: No, your Honour, but can I say this, that the - if the money is not paid into Court, well, the demand is not then set aside, but if there'd a partial payment, that is then - there'll be some sort of compromise between the parties. Like, a cheque just won't arrive in the mail. And it's not as though the company is then automatically wound up.

HIS HONOUR: That's right.

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MR MARTIN: My side has to do something.

HIS HONOUR: That's right. You've got to file a new application.

MR MARTIN: This is just an - it's an evidentiary benefit that my client gets on an application to wind up. That's all the statutory demand amounts to, and so if there's some kind of compromise between the parties, well, that's the end of the matter, and so there's nothing wrong with the orders that your Honour has made and we can commence whatever proceedings we want in whatever Court as long as it's a claim, if that's what we've undertaken to do. And if it's resolved, well, it's resolved, but we want the benefit of those orders for the time being.

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MR MORGAN: Your Honour, I don't share my learned friend's confidence about that. The way this stands is, we're obliged to pay into Court the 268, even if-----

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HIS HONOUR: Yes, that's right. I can see your concern.

MR MORGAN: Even if, for example, we'd - say hypothetically we reached a compromise in the next few days to pay the respondent the - about \$240,000 or so other than the GST component, this order would still be on foot, requiring us to pay this whole amount into Court.

HIS HONOUR: That's right.

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MR MORGAN: If the words might be added, perhaps, after the reference to the 268 of 9240, "or" - something to the effect of - well, "or the balance".

HIS HONOUR: "Or such lesser sums as the respondent may in writing agree to". Something like that.

MR MORGAN: Yes.

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MR MARTIN: I'd be happy with that.

HIS HONOUR: That should be all right.

MR MARTIN: Yes, I'm happy with that, your Honour.

HIS HONOUR: Or, the respondent or his solicitors. No doubt it'll be a solicitors' letter. All right. Well, I believe the order to be made by the Court now says this:

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Upon the respondent by his counsel undertaking to commence within 14 days a claim in respect of the debt referred to in his statutory demand dated 27 September 2006 and served on the applicant on 28 September 2006, I order that the statutory demand be set aside conditionally upon the applicant having paid into Court the amount of the demand, being \$268,800 and a further amount of \$9,240 for interest, or such lesser sums as the respondent or his solicitors may in writing agree to, within 14 days. I order that costs be costs in the cause in the proceeding to be instituted by the respondent. Liberty to apply.

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