

SUPREME COURT OF QUEENSLAND

CITATION: *Park & McIntosh v Mansukhani and Ors; Karam v Good Luck Holdings Pty Ltd & Anor; Karam v Good Luck Holdings Pty Ltd & Ors; Karam v Good Luck Holdings Pty Ltd & Ors; Park & McIntosh v Mansukhani and Ors; Park & McIntosh v Mansukhani and Ors* [2006] QCA 495

PARTIES: **JOHN RICHARD PARK AND LACHLAN STUART MCINTOSH AS LIQUIDATORS OF GOOD LUCK HOLDINGS PTY LTD** ACN 100 061 425 (IN LIQ)
(applicant/first respondent)
v
BHARAT MANSUKHANI
(respondent/second respondent)
LOVE MANSUKHANI
(respondent/third respondent)
POOJA DAYAL MANSUKHANI
(respondent/applicant)

THAMIR KARAM
(applicant/respondent)
v
GOOD LUCK HOLDINGS PTY LTD ACN 100 061 425
(respondent)
POOJA DAYAL MANSUKHANI
(respondent/applicant)

THAMIR KARAM
(plaintiff/respondent)
v
GOOD LUCK HOLDINGS PTY LTD ACN 100 061 425
(defendant/applicant)
DAYAL HASSARAM MANSUKHANI
(defendant/applicant)
POOJA DAYAL MANSUKHANI
(defendant/applicant)

THAMIR KARAM
(plaintiff/respondent)
v
GOOD LUCK HOLDINGS PTY LTD ACN 100 061 425
(defendant)
DAYAL HASSARAM MANSUKHANI
(defendant/appellant)
POOJA DAYAL MANSUKHANI

(defendant/appellant)

**JOHN RICHARD PARK AND LACHLAN STUART
MCINTOSH AS LIQUIDATORS OF GOOD LUCK
HOLDINGS PTY LTD ACN 100 061 425 (IN LIQ)**

(applicant/respondent)

v

BHARAT MANSUKHANI

(respondent)

LOVE MANSUKHANI

(respondent)

DEENA MANSUKHANI

(respondent/appellant)

POOJA DAYAL MANSUKHANI

(respondent)

HEDAY PTY LTD ACN 001 856 346

(respondent)

**JOHN RICHARD PARK AND LACHLAN STUART
MCINTOSH AS LIQUIDATORS OF GOOD LUCK
HOLDINGS PTY LTD ACN 100 061 425 (IN LIQ)**

(applicant/respondent)

v

DAYAL HASSARAM MANSUKHANI

(respondent)

**DAYAL & SONS INTERNATIONAL INVESTORS PTY
LTD ACN 100 548 490**

(respondent/appellant)

BHARAT MANSUKHANI

(respondent)

DEENA MANSUKHANI

(respondent)

LOVE MANSUKHANI

(respondent)

POOJA DAYAL MANSUKHANI

(respondent)

SUNCORP-METWAY LIMITED ACN 010 831 722

(respondent)

FILE NO/S:

Appeal No 2348 of 2006

Appeal No 2349 of 2006

Appeal No 2350 of 2006

Appeal No 4624 of 2006

Appeal No 4718 of 2006

Appeal No 6614 of 2006

SC No 10989 of 2005

SC No 7956 of 2005

DC No 380 of 2004

DC No 380 of 2004

SC No 10989 of 2005

SC No 10989 of 2005

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeals and Applications for Extensions of Time

ORIGINATING COURT: Appeal No 2348 of 2006 - Supreme Court at Brisbane
Appeal No 2349 of 2006 - Supreme Court at Brisbane
Appeal No 2350 of 2006 - District Court at Southport
Appeal No 4624 of 2006 - District Court at Southport
Appeal No 4718 of 2006 - Supreme Court at Brisbane
Appeal No 6614 of 2006 - Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 27 November 2006

DELIVERED AT: Brisbane

HEARING DATE: 27 November 2006

JUDGES: Keane JA, Holmes JA and Helman J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER: **1. In Appeal No 2348 of 2006, the application and appeal are dismissed; costs are to be assessed on an indemnity basis**
2. In Appeal No 2349 of 2006, the application and appeal are dismissed; costs are to be assessed on an indemnity basis; costs held by way of security for Dr Karam's costs are to be made available to meet the assessed costs of Dr Karam
3. In Appeal No 2350 of 2006, the application and appeal are dismissed; costs are to be assessed on an indemnity basis; costs held by way of security for Dr Karam's costs are to be made available to meet the assessed costs of Dr Karam
4. In Appeal No 4624 of 2006, the appeal is dismissed; costs are to be assessed on an indemnity basis; costs held by way of security for Dr Karam's costs are to be made available to meet the assessed costs of Dr Karam
5. In Appeal No 4718 of 2006, the appeal is dismissed; costs are to be assessed on an indemnity basis; the costs of Heday Pty Ltd are to be paid from the proceeds of the sale of the property held by J Park and S McIntosh
6. In Appeal No 6614 of 2006, the appeal is dismissed; costs are to be assessed on an indemnity basis

CATCHWORDS: PROCEDURE - ABUSE OF PROCESS - whether any utility in proceedings concerned - whether conduct of parties constitutes attempt to abuse processes of Court and unduly vex other parties
Uniform Civil Procedure Rules 1999 (Qld), r 5

COUNSEL: K Aswad (*sol*) for Karam
D A Quayle for Park and McIntosh
K T Magee for Heday Pty Ltd
No appearance for the Mansukhani interests

SOLICITORS: Ledger Commercial & Property Lawyers for Karam
Mallesons Stephen Jaques for Park and McIntosh
Hoy & McCormack for Heday Pty Ltd
No appearance for the Mansukhani interests

KEANE JA: On 9 September 2005, Judge Rackemann of the District Court gave judgment in favour of Dr Thamir Karam in Dr Karam's claim for damages for misrepresentation against Goodluck Holdings Pty Ltd (GLH), D.H. Mansukhani and P.D. Mansukhani.

P.D. Mansukhani was the sole director and shareholder of GLH. D.H. Mansukhani was the husband of P.D. Mansukhani and, evidently, the individual through whom GLH transacted its business. On 18 November 2005, GLH and the Mansukhanis filed a notice of appeal against the decision of Rackemann DCJ but were out of time to do so.

Hence, an application dated 20 March 2006 was made to this Court for an extension of time within which to appeal against the judgment of Rackemann DCJ. This is proceeding CA 2350 of 2006.

On 31 October 2005, White J made an order for the winding up of GLH and appointed Messrs Park and McIntosh as liquidators. The basis for the winding up order was an unsatisfied

statutory demand by Dr Karam for the payment of \$7,561.53 being the amount of an order for costs made in Dr Karam's favour by the District Court. That order was an interlocutory order from which there had been no appeal.

On 20 March 2006, D.H. Mansukhani purporting to act pursuant to a power of attorney given to him by P.D. Mansukhani, applied for an extension of time to appeal against the order of White J. This proceeding is CA 2349 of 2006.

On 1 June 2006, Rackemann DCJ refused an application by D.H. Mansukhani and P.D. Mansukhani to reopen the proceedings in which his Honour had given judgment in September 2005. An appeal against this refusal was filed on 5 June 2006. This is proceeding CA 4624 of 2006.

On 13 January 2006, Justice Muir ordered the appointment of Messrs Park and McIntosh as receivers and managers of the Good Luck Trust of which GLH was trustee. On 20 March 2006 D.H. Mansukhani purporting to act pursuant to the power of attorney given to him by P.D. Mansukhani, filed an application for an extension of time within which to appeal against the order of Justice Muir. This proceeding is CA 2348 of 2006.

On 5 June 2006, Justice White refused an application by D.H. Mansukhani for leave to appeal on behalf of his daughter Deena Mansukhani in proceedings against Messrs Park and McIntosh to stay the sale by them of property owned by GLH. This application by Deena Mansukhani was also refused.

On 5 June 2006, a notice of appeal was filed by D.H. Mansukhani on behalf of his daughter. This is proceeding CA 4718 of 2006. On 27 July 2006, P.D. McMurdo J ordered the removal of a mortgage lodged in respect of land owned by GLH by Dayal and Sons International Proprietary Limited (DSI), a company controlled by D.H. Mansukhani. DSI has appealed against that decision. These proceedings are CA 6614 of 2006.

The motivation apparently in forming this welter of litigation is the desire of the Mansukhani interests and, principally, D.H. Mansukhani, to prevent the realisation of an asset owned by GLH for the benefit of its creditors. The asset in question is a piece of real property situated at 397 - 401 Nerang Road, Molendinar on the Gold Coast. I shall refer to it as "the property".

On 17 May 2006, following a marketing campaign, Messrs Park and McIntosh, in their capacity as receivers of the assets of the Good Luck Trust, entered into a contract for the sale of the property to Heday Pty Ltd. Before the contract of sale was completed, D.H. Mansukhani paid out GLH's mortgagee, Suncorp, and took an assignment of Suncorp securities from GLH in favour of D.H. Mansukhani who, in turn, assigned the securities to DSI.

Messrs Park and McIntosh sought to ascertain the amount of the payout due on the Suncorp loan, but DSI asserted that by reason of the "all monies" clause in the Suncorp mortgage,

DSI, as mortgagee by assignment, was entitled to recover a debt owed by GLH to DSI which was not previously secured.

Shortly before the application by Messrs Park and McIntosh was heard by McMurdo J, DSI executed a lease in favour of Deena Mansukhani, a director of DSI, of the property. At the stage when the lease was executed, DSI was not in possession of the property and had not given a notice of exercise of power of sale. The lease was for 25 years, but terminable by the lessee on one day's notice.

The application by Messrs Park and McIntosh sought orders from McMurdo J obliging DSI to do whatever was necessary to unclog GLH's equity of redemption to enable the sale to Heday to be completed. The order was made and the sale has now been completed and the transfer registered. No basis was raised by the Mansukhani interests for setting aside Heday's registered title.

Because the sale has now been completed and the transfer registered, there is no utility in the proceedings before this Court in CA 2348 of 2006, CA 2349 of 2006, CA 471 of 2006 and CA 6614 of 2006.

As to CA 2350 of 2006, no good reason was shown for the grant of an extension of time within which to appeal because the Mansukhani interests had ample opportunity to file a notice of appeal had they been minded to do so, and no satisfactory explanation has been given for their failure to do so.

Further the proposed appeal has no real prospects of success involving, as it does, challenges to findings as to credibility made by the learned trial judge.

As to CA 4624 of 2006, the attempt by the Mansukhani interests to reopen the judgment was, as is apparent from the transcript, without any substance. These would be sufficient reasons for refusing the applications for the extensions of time sought in these proceedings. But there is a broader basis on which these proceedings should be dealt with.

On 26 October 2006, all parties to these applications and appeals were notified by letter from the Deputy Registrar to the addresses respectively given by them, that all of the matters were listed for hearing before this Court today, Monday 27 November 2006.

On 22 November 2006, a letter was received by the Deputy Registrar from the self described, "authorised signatory for Mr Dayal Mansukhani and Ms Deena Mansukhani", to the effect that they are delaying complying with directions in relation to the hearing on today's date,

"was due to the fact that Mr Dayal Mansukhani left for China and his family left for Dubai".

This letter went on relevantly to say,

"They would be back shortly. We regret for the inconvenience [sic]...we request you to kindly adjourn the hearing of all the cases to any date between 10

January to 31 January 2007 so that all concerned would get an opportunity as per principles of natural justice [sic]. We again regret for the delay which was unintentional. We assure that no scope would be given for the same in future [sic].".

On 23 November 2006, the deputy registrar responded to this correspondence confirming,

"That the hearing of all matters will take place before the Court of Appeal at 10.15 a.m. Brisbane time on Monday 27 November 2006",

and requesting advice as to, "whether any of the appellants intend to appear at the hearing".

On 23 November 2006, the Deputy Registrar received a facsimile transmission from the "Authorised representative of Mr Dayal H Mansukhani & Ms Deena Dayal Mansukhani" requesting "your communication about the adjourned hearing.".

As of 10.15 am on 27 November 2006, no further response has been received from the Mansukhani interests to the Registrar's correspondence. When the matter was called on for hearing this morning after 10.15 am on 27 November 2006, there was no appearance from Mansukhani interests. No proper basis has been shown for granting an adjournment and the application for an adjournment is refused.

The Court has ample inherent power to prevent the abuse of its processes. It is impossible to regard the high handed conduct of the Mansukhani interests to which reference has been made as other than an attempt to abuse the processes of the Court

and unduly to vex the respondents to these proceedings by stringing out the proceedings for as long as possible.

This course of conduct is distinctly in breach of r 5 of the *Uniform Civil Procedure Rules 1999* (Qld). The Court's power in this regard is the more readily exercised by reason of the absence of any apparent merit in the proceedings which have been brought by the Mansukhani interests.

Each of the applications and appeals is therefore to be struck out with costs to be assessed on the indemnity basis. The costs of the respondent Heday Pty Ltd are to be paid from the proceeds of sale of the property held by Messrs Park and McIntosh. The costs held by way of security for Dr Karam's costs, are to be made available to meet the assessed costs of Dr Karam.

On behalf of Dr Karam, an application was made today to deal with the Mansukhani interests for contempt of Court by reason of their failure to provide security for costs in accordance with an order of the Court in that regard. The security was provided by the Mansukhani interests but one day late.

The Court would not entertain an application to deal with a party for contempt where the application has not been served on the party charged with contempt and that application is dismissed.

A further application was made on behalf of Dr Karam for an order restraining the Mansukhani interests from commencing further proceedings against Dr Karam without the leave of the Court. Once again this application will not be entertained by the Court in the absence of proper notice to the Mansukhani interests.

The orders of the Court that I propose are therefore that each of the applications and appeals be struck out with costs to be assessed on the indemnity basis. The costs of the respondent Heday Pty Ltd are to be paid from the proceeds of the sale of the property held by Messrs Park and McIntosh. The costs held by way of security for Dr Karam's costs are to be made available to meet the assessed costs of Dr Karam in these proceedings.

HOLMES JA: I agree.

HELMAN J: I agree.

KEANE JA: The orders of the Court will therefore be as I have indicated.
