

# SUPREME COURT OF QUEENSLAND

CITATION: *Bluescope Steel Ltd v Hoare* [2010] QSC 10

PARTIES: **BLUESCOPE STEEL LIMITED** ACN 000 011 058  
(plaintiff/applicant)

v

**DORIS AMY HOARE**  
(defendant/respondent)

FILE NO/S: BS 6991 of 2009

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 14 January 2010

DELIVERED AT: Brisbane

HEARING DATE: 14 January 2010

JUDGE: Fryberg J

ORDER:

- 1. Declare that the Plaintiff holds an equitable mortgage and/or charge over the property and improvements of the Defendant described as Lot 288 on Registered Plain 742744, County of Nares, Parish of Cairns being all that land in Title Reference 21293040 pursuant to the Guarantee, Indemnity and Charge between the Plaintiff and the Defendant dated 12 December 2005.**
- 2. Judgment entered for the Plaintiff against the Defendant for \$366,098.02 pursuant to the Guarantee between the Plaintiff and the Defendant dated 12 December 2005.**
- 3. The Defendant to pay the Plaintiff interest on the sum of \$366,098.02 in the amount of \$19,859.56 calculated in accordance with s 47 of the *Supreme Court Act 1995* (Qld).**
- 4. The Defendant to pay the Plaintiff's costs of and incidental to the proceedings.**

CATCHWORDS: Procedure – Costs – General rule – Costs follow the event –

Costs of whole action – Generally – Basis for plaintiff’s costs  
in bringing application for default judgment against guarantor  
– Relevant considerations

COUNSEL: D E Chesterman for the applicant  
No appearance for the respondent

SOLICITORS: Holman Webb Lawyers for the applicant  
No appearance for the respondent

HIS HONOUR: This is an application for default judgment. The claimant seeks a declaration as to the existence of an equitable charge over the defendant's land.

The defendant is alleged in the pleading to have given a guarantee to the plaintiff, a term of which provided for her land to be the subject of such a charge. The principal debtor referred to in the guarantee is indebted to the plaintiff for more than \$300,000 according to the pleading and the guarantee has been called on and not responded to.

The rules therefore have been complied with. That much is all in evidence and the rules having been complied with the plaintiff is entitled to the judgment which, on the face of the pleadings, it seeks.

The claim originally sought an order that the property be sold but that is now seen to be unnecessary since there is a first mortgagee who is in the course of selling it.

As Mr Chesterman helpfully pointed out, also the failure to file a defence and to serve one has meant that the allegations in the statement of claim are all deemed to be admitted.

The applicant seeks not only the judgment claimed but also costs on the indemnity basis. The basis for that submission is the provision of cl 1 of the guarantee pursuant to which the defendant indemnified the plaintiff "on demand against any monetary loss or damage [the plaintiff] may sustain or incur as a result of any default by the customer in the due and

punctual payment for such goods and/or services."

The costs which have been put into evidence in support of the claim for fixing indemnity costs relate to proceedings against the guarantor not to proceedings against the company, the principal debtor. It appears that no such proceedings have been instituted and there are no such costs. The question therefore is whether costs incurred in proceedings against the guarantor can be said to be monetary loss or damage which the plaintiff has sustained "as a result of" the principal debtor's default.

Mr Chesterman has submitted that but for the default the plaintiff would not have commenced the proceedings. While that is not deposed to explicitly in the evidence, it is an inference which I am prepared to draw. However the real question is whether mere causation in fact is enough to bring the costs within the ambit of the expression "as a result of".

The commencement of proceedings against the guarantor was an entirely optional course adopted by the plaintiff and it seems to me that the costs of those proceedings are too remote to be described as loss or damage which the plaintiff has sustained as a result of the default of the customer.

It follows that in my judgment the costs of the action against the guarantor do not fall within the scope of the indemnity. The plaintiff is, of course, entitled to have its costs under the ordinary rule that costs follow the event but, in my judgment, they must be costs on the standard basis not on the

indemnity basis.

I will amend the draft by deleting the words "on the indemnity basis fixed in the amount of \$22,000" from para 4.

...

In para 2 I will take out the words "defendant pay the plaintiff the sum of" and put in "plaintiff have judgment against the defendant for".

With those amendments there is an order in accordance with the draft initialled by me and placed with the papers.

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