

SUPREME COURT OF QUEENSLAND

CITATION: *180 Capital Finance Pty Ltd v Coomer & Anor (No 2)* [2010] QSC 262

PARTIES: **180 CAPITAL FINANCE PTY LTD ACN 110 294 767**
(plaintiff/respondent)
v
RONALD JAMES COOMER
(first defendant/first applicant)
AND
PETRINA MARIA COOMER
(second defendant/second applicant)

FILE NO/S: SC No 974 of 2008

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 20 July 2010

DELIVERED AT: Brisbane

HEARING DATES: On the papers

JUDGE: Atkinson J

ORDERS:

- 1. All interlocutory injunctions and undertakings be discharged;**
- 2. Leave be granted for the defendants to join 180 Corporate Pty Ltd as a new defendant to the counterclaim;**
- 3. The first and second defendants file and serve a further amended defence and counterclaim by 10 August 2010;**
- 4. The plaintiff and 180 Corporate Pty Ltd file a defence to the counterclaim by 31 August 2010;**
- 5. Disclosure be completed by 21 September 2010;**
- 6. The matter be listed for case flow review on 24 September 2010.**
- 7. The defendants pay the plaintiff's costs of and incidental to the application filed on 18 September 2009 to be assessed.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – where applicants' application to set aside or stay summary judgment was dismissed – what costs order and consequential orders are appropriate in the

circumstances

Uniform Civil Procedure Rules 1999 (Qld), r 681

COUNSEL: The applicants appeared on their own behalf
J W Peden for the respondent

SOLICITORS: The applicants appeared on their own behalf
Reardon & Associates (Brisbane) acting as Town Agent for
Yates Beaggi Lawyers (Sydney) for the respondent

[1] On 22 April 2010 I published reasons for dismissing an application by the defendants to set aside or stay a summary judgment given in this court on 29 July 2008. I also made the following orders:

1. The plaintiff file and serve in writing by email a copy of any consequential orders sought by 29 April 2010;
2. The defendants respond by 6 May 2010;
3. A decision would be made on the papers to save further costs.

[2] Both parties failed to comply with the directions given in a timely way but nevertheless I eventually received submissions from both the plaintiff and the defendants.

Costs

[3] The first matter is the question of costs. The plaintiff was entirely successful in resisting the defendants' application. It sought its costs. The defendants sought to have costs reserved or, if ordered against the defendants, not to be paid until after the whole proceeding is finalised. In support of this argument Mr Coomer, the first defendant, effectively argued that the decision made was wrong and also submitted that the costs order should await final judgment in this proceeding. There is no basis for opposing the usual order as to costs or delaying the time when that order is effective.

[4] The usual rule as to the award of costs is found in r 681 of the Uniform Civil Procedure Rules 1999 ("UCPR"):

- “(1) Costs of a proceeding, including an application in a proceeding, are in the discretion of the court but follow the event, unless the court orders otherwise;
- (2) Subrule (1) applies unless these rules provide otherwise.”

[5] The defendants were entirely unsuccessful in their application and there is no reason why the usual rule as to the award of costs should not follow. The costs should follow the event which means that the defendants should be ordered to pay the

plaintiff's costs of and incidental to the application filed on 18 September 2009 to be assessed.

Interlocutory injunction

- [6] The next question to be determined is whether or not the interlocutory injunction preventing the plaintiff from recovering possession of the land should be lifted. In view of the success of the plaintiff before Mullins J on 29 July and before me on 22 April 2010, there is no reason to maintain any of the previous injunctive orders and undertakings. They should be vacated so the plaintiff may enforce its judgment for possession immediately if it wishes to do so.

Directions

- [7] I make the following directions for the remainder of this matter to proceed to trial if necessary:
1. All interlocutory injunctions and undertakings be discharged;
 2. Leave be granted for the defendants to join 180 Corporate Pty Ltd as a new defendant to the counterclaim;
 3. The first and second defendants file and serve a further amended defence and counterclaim by 10 August 2010;
 4. The plaintiff and 180 Corporate Pty Ltd file a defence to the counterclaim by 31 August 2010;
 5. Disclosure be completed by 21 September 2010;
 6. The matter be listed for case flow review on 24 September 2010.
- [8] I have not ordered that the trial be on affidavit since the defendants are unrepresented and would be disadvantaged by an order that their evidence be given by affidavit. At the next case flow review the parties should be ready to propose all directions necessary to have this matter proceed to mediation and, if necessary, trial.