

**COURT OF APPEAL**

**HOLMES JA  
MUIR JA  
CHESTERMAN JA**

**Appeal No 13620 of 2009  
SC No 7752 of 2009**

**TRASPUNT NO 5 PTY LTD**

**Appellant**

**And**

**NEUMANN CONTRACTORS PTY LTD**

**Respondent**

**BRISBANE**

**DATE 12/08/2010**

**ORDER**

**HOLMES JA:** This is an application for amendment of the order of this Court made on 21 May 2010 and for some further orders not previously sought.

These are the conclusions and orders I have reached:

1. Order 3 of this Court made on the 21 May 2010 will be amended so that it now reads, “Neumann pay Traspunt’s costs of the appeal and of the hearing at first instance”.
2. The respondent is to pay the applicant interest at 7 per cent per annum on the sum of \$697,100.03 from 21 January 2010 to 11 June 2010.
3. The respondent is to pay the applicant interest at 7 per cent per annum on the sum of \$5,703.46 from 12 June 2010 until 9 August 2010.

I should say in respect of that order that it constitutes, plainly, something of a compromise because the Court is left in a state of having inadequate information to reach any clearer view. The need to borrow was not clearly established on the part of the applicant, nor, indeed, the

duration of the loan which it obtained. On the other hand, nothing is known of the benefit that the respondent might have received from its possession of the moneys.

4. The applicant is to pay the respondent's costs of the stay application, having failed to establish that its success on the appeal was likely to be rendered nugatory and having persisted with its application after the material was filed. Nothing has occurred since the stay application to cause the Court to reach any different view.

As to the costs of this application, there were arguments on both sides. The questions of interest and the costs of the stay were not raised on the appeal, although they might have been. The applicant was unsuccessful here in relation to its application for the costs of the stay. On the other hand, the respondent's failure to pay the full amount of the money was its fault; it has been slow in responding and it initially opposed paying any interest in respect of the judgment amount. On the whole, the appropriate course seems to be to make no order as to the costs of this application.

**MUIR JA:** I agree.

**CHESTERMAN JA:** I agree.

**HOLMES JA:** Those are the orders of the Court.