

SUPREME COURT OF QUEENSLAND

CITATION: *South Sky Investments v Prins* [2011] QSC 72

PARTIES: **SOUTH SKY INVESTMENTS PTY LTD**
ACN 097 092 709
(Plaintiff)

v

HENDRIK PRINS
(First Defendant)

and

SOKHOM PRINS
(Second Defendant)

FILE NO/S: BS 10214 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 April 2011

DELIVERED AT: Brisbane

HEARING DATE: 1 April 2011

JUDGE: McMurdo J

ORDER: **1. Trial adjourned to a date to be fixed.**
2. Defendants given leave to file an amended defence.
3. Matter removed from the commercial list.
4. No order as to costs in relation to the proceedings on 1 April 2011 or the adjournment of the trial.

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – OTHER MATTERS – where the matter was set down for trial – where there was the late provision of evidence – where there were issues in relation to disclosure – where there were applications to file amended pleadings and to adjourn the trial – whether the trial should be adjourned – whether the defendants should be given leave to file an amended defence

COUNSEL: S Doyle SC with D Clothier for the plaintiff
The defendants appeared on their own behalf

SOLICITORS: Allens Arthur Robinson for the plaintiff
The defendants appeared on their own behalf

- [1] The parties agree that the trial of this case, which is scheduled for next week, should be adjourned.
- [2] The reasons for that adjournment, as frankly put forward by the counsel for the plaintiff, are as follows. Firstly, there is a difficulty caused by the late provision of evidence by the plaintiff, the difficulty being that the defendants have insufficient time to prepare their case in response to that.
- [3] Secondly, there is an application by the defendants to amend their defence. Thirdly, there is a complaint about deficient disclosure by the defendants. The plaintiff says that it became aware of the relevant documents only when seeing the defendants' evidence on the 25th of March.
- [4] I accept that these circumstances taken together mean that the trial will have to be adjourned. It will be adjourned to a date to be fixed. I propose to remove this matter from the commercial list so that unless it is under the supervision of a particular Judge for some other reason, it will have to make its way to a hearing in the normal way by a request for trial date.
- [5] I'll remove it from the commercial list because having been given an early trial date, the parties were unable to have the case ready for trial on this scheduled date.
- [6] The other matter is the application for leave to amend the defence. Given that the trial is to be adjourned, the major impediment to that application is removed.
- [7] The plaintiff would wish to challenge parts of those amendments on the basis that they are embarrassing or otherwise disclose no case. Leave will be given to the defendants to amend their pleading in accordance with that the subject of the application, but without prejudice to the plaintiff's right to make such application to strike out parts of it as the plaintiff shall be advised.
- [8] In the circumstances there will be no order for costs of today's hearing or of the adjournment of the trial.