

SUPREME COURT OF QUEENSLAND

CITATION: *Trusified Pty Ltd v Forrestbridge Pty Ltd & Ors* [2011] QSC 242

PARTIES: **TRUSIFIED PTY LTD ACN 110 783 581**
(applicant)
v
FORRESTBRIDGE PTY LTD ACN 002 638 708
(first respondent)
MARK WILLIAMSON
(second respondent)
CCTV DIRECT PTY LTD ACN 115 279 546
(third respondent)

FILE NO: BS 12050 of 2009
BS 2653 of 2010

DIVISION: Trial

PROCEEDING: Applications

DELIVERED ON: 1 August 2011

DELIVERED AT: Brisbane

HEARING DATE: 23-24 June and 1 August 2011

JUDGE: Fryberg J

ORDERS: 1. The applicant disclose to the respondents each document:
1.1 In its possession or under its control; and
1.2 Directly relevant to an allegation in issue in the pleadings; and
1.3 In particular –
a. Invoices issued by CCTV Direct Pty Ltd after 1 July 2001 as set out in respect of companies named in paragraph 8.4.1(b) of the counterclaim.
b. Invoices issued by CCTV Supplied from 10 September 2009 to date as set out in (a) above.
c. Invoices issued by Nuvico Australia from 1 September 2009 to date as set out in paragraph 8.4.1(b) of the counterclaim.
d. Inventories of stock held by CCTV Direct Pty Ltd and CCTV Supplies for Nuvico Australia from 1 July 2009 to 31 December 2009.
e. Any documentation relating to the movement of stock of CCTV Direct Pty Ltd and CCTV Supplies and Nuvico Australia between 1 July 2009 and 30 June 2010.

f. All creditor invoices from Nuvico International to CCTV Direct Pty Ltd between 1 July 2009 and 31 December 2009.

g. all account records for CCTV Direct Pty Ltd in text readable form from 1 July 2009 to date.

h. All payment records of monies paid by CCTV Direct Pty Ltd to all entities between 1 July 2009 to date.

i. All bank account records showing financial transactions between CCTV Direct Pty Ltd, CCTV supplies, Nuvico Australia and Security Connections in respect of the companies listed in paragraph 8.4.1(b) of the counterclaim.

1.4. Costs to be in the cause.

Notation

1. On or before 8 August 2011 the Plaintiff review the Statement of Claim and make necessary amendments.
2. On or before 15 August 2011 the Defendant(s) review the Defence and Counterclaim and make any necessary amendments.
3. On or before 22 August 2011 the Defendants by counterclaim review the reply and answer and make any necessary amendments, including the headings in the Reply and Answer.
4. In the case of each pleading the whole of the documents is to be reviewed.

CATCHWORDS: Procedure - Supreme Court procedure - Queensland - Procedure under *Uniform Civil Procedure Rules 1999* (Qld) and predecessors - Generally - refusal to make disclosure – “*an allegation in issue in the pleadings*” – *Uniform Civil Procedure Rules 1999, r 211* - not limited to an allegation in issue between the disclosing party and another party

Uniform Civil Procedure Rules 1999 r 211

COUNSEL: M E Pope for the applicant
C J O’Neill for the respondents

SOLICITORS: Derek Geddes for the applicant
Michelle Porcheron Lawyers for the respondents

HIS HONOUR: This is an application for disclosure of documents by the third defendant in proceedings which began by way of an application by the now plaintiff.

It was ordered last year that the proceedings continue as if commenced by claim and hence pleadings have been delivered. The pleadings disclose that the plaintiff, a company called Trusified Proprietary Limited, sues the first defendant, the second defendant and the third defendant, for an order that the company, by which the plaintiff means the third defendant, be wound up.

The first defendant, Forrestbridge Proprietary Limited, is alleged to be one shareholder in the third defendant and the second defendant to be the other shareholder. The proceedings have been ordered to be heard with related proceedings in action 2653 of 2010 and is unnecessary to refer further to them. By a defence and counterclaim the three defendants challenge the statement of claim by bald denials of the allegations that the company has ceased to trade, that the relationship between the shareholders has broken down and that proceedings have been instituted among the directors.

How the company CCTV is able to give instructions for such a pleading is not apparent but it has. It also brings a counterclaim against the applicant, Trusified, and against Mr and Mrs Setschnjak, the persons who they allege are officers of CCTV, alleging serious breaches of

fiduciary duty and of the *Corporations Act 2001*.

Those are particularised at least to some extent in the counterclaim. The allegations, materially, are either denied or not pleaded to. The respondents have sought disclosure of documents from Trusified relating to those matters of counterclaim. I note in passing that, for example in paragraphs 36 and 37, the plaintiff and the directors do not plead to paragraphs 9(1)(g) and 9(1)(h) of the counterclaim.

There is every likelihood that that will be taken as a deemed admission since absence of particulars is not a proper ground for not pleading. It is not necessary to plead to particulars. That, however, need not be dealt with by me today.

The respondent to today's application, Trusified, resists giving disclosure on the basis that no relief is sought in the counterclaim against it and it is not a party to the counterclaim. That is, technically, not correct since the prayer for relief, in fact, seeks a declaration against the plaintiff.

It may be that no relief is available against Trusified as nothing is pleaded in the counterclaim against it. I am prepared to decide this application on the assumption that Trusified could have the prayer for relief against it struck out if it applied.

The provisions of rule 211 require a party to a proceeding to disclose by each other party of each document in its possession or under its control directly relevant to, "an allegation in issue in the pleadings."

It does not limit that to an allegation in issue between the disclosing party and another party. I see no reason to accept the submission that it should be construed as so limited. No authority in support of that submission was advanced to me and in principle it seems an unlikely construction for two reasons: first, because the natural meaning of the words is otherwise and, second, because I see no policy reason for making a party who seek such disclosure go through the process of third party disclosure against someone who is already a party to the proceedings.

I reject the plaintiff's submission. On that basis the plaintiff accepted that there was no reason why orders should not be made against it and the parties are agreed as to the form of order.

I will order in terms of general disclosure under rule 211 and in addition with the addition of the words, "And in particular any documents being," and then setting out the documents listed in paragraph 14 of Mr O'Neill's outline of submissions.

I ask that the parties agree to a draft order and bring it in by close of business today. Mr O'Neill you'll be responsible for seeing that that happens.

There should also be included in the draft order on the motion of the Court an order that on or before the 8th of August the plaintiff review the statement of claim and make any necessary amendments, that on or before the 15th of August the defendants review the defence and counterclaim and make any necessary amendments, and that on or before the 22nd of August the respondents by counterclaim review the reply and answer and make any necessary amendments.

That includes not only the heading in the reply and answer but in the case of each pleading the whole of the document. There are numerous pleading deficiencies throughout those documents.

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HIS HONOUR: The draft should also provide for costs to be costs in the cause