

COURT OF APPEAL

GOTTERSON JA

**Appeal No 1930 of 2012
DC No 906 of 2005**

MW GROUP PTE LTD

Applicant

v

MW GROUP (BRISBANE) PTY LTD

Respondent

&

ROBERT KIM WILMOT

Respondent

BRISBANE

DATE 11/07/2012

JUDGMENT

HIS HONOUR: On the 20th of June, 2011, Judge McGill made orders in file number BD906/05 requiring MW Group Pte Ltd to pay Mr Wilmot substantial Australian dollar and Singaporean dollar amounts, and also costs.

Those orders complemented declaratory orders his Honour had made in the proceedings on the 29th of April, 2011.

Having agreed in August, 2011, to the dismissal, by consent, of an application for leave to appeal those orders, on the 2nd of March, 2012, MW Group Pte filed an application for an extension of time within which to apply for leave to appeal the same orders.

The Deputy Registrar of this Court promptly set a timetable for these proceedings, which was notified to the parties on the 6th of March, 2012.

Significantly, the parties' legal representatives were notified that the Court required the parties to present their arguments in the appeal, as well as, in the application on the hearing date subsequently given.

A hearing date has been given. It is the 24th of July next. The date was notified to the legal representative on the 25th of June, 2012.

Not unsurprisingly, the Wilmot interests have applied for an order for security for costs. The application relates to costs to which they may become entitled, if successful in the proceedings to be heard on the 24th of July. The application was filed on the 22nd of June last, following a course of correspondence on the topic between the legal representatives.

Equally unsurprisingly, the MW Group Pte parties have not resisted the making of an order. The approach they take is a responsible one, without making comment upon individual considerations, I observed that, in my view at least, one of the pre requisites for making a security for costs order exists, and discretionary considerations weigh significantly in favour of such an order.

The parties do differ as to the amount of security to be provided. Each has filed an affidavit by an experienced cost assessor. The two cost assessors have made their respective estimates of costs of proceedings in this Court that would be likely to be recoverable by the Wilmot interests in the event that they succeed.

Mr Michael Graham has assessed the costs at \$16,437.20. On the other hand, the assessment made by Mr Stanley Moffatt is at \$7,256.20. There are significant differences between the assessors as to what cost items would be recoverable, and in some instances, the applicable amount for a recoverable item.

It is apparent that one area of difference relating to costs to be incurred in relation to further

affidavit material remains problematic in that it is not entirely fair to me at this stage, that such material will or will not be filed by the applicant/appellants.

In any event, it would be inappropriate for me to attempt to adjudicate upon points of difference between the two assessments. However, they do give considerable guidance as to the range for an appropriate amount of security.

All things considered, I regard an amount of \$12,000 as appropriate. Subject to any further submissions on the former order, I propose to make orders in the form of the amended application attached to the written submissions filed on behalf of the Wilmot interests on the 6th of July, subject to the following:

Firstly, in regard to paragraph 1, in the first line, substitute "and" for "and/or". And in the second last line, substitute the amount of "\$12,000" for what follows the word "of".

And the other change I propose is in relation to paragraph 5, and that that be substituted by an order that the costs of and incidental to this application be costs in the cause.

I might say, in relation to the last, that it has become apparent that there was a difference of opinion as to the amount of quantum of costs. It was necessary that there be a hearing to determine an appropriate amount because the amount which has been assessed as appropriate differs, and is less than the amount that the applicants for security for costs were willing to accept, and indeed, it exceeds any amount that latterly the respondents to this application were prepared to pay.

I may say that I'm not confident that negotiation would have resolved and resulted in an agreed amount of the order that I have determined that's appropriate. So, for all these reasons, the costs order will be:

1. Pursuant to Rule 670(1) and Rule 772 of the *Uniform Civil Procedure Rules 1999*

(Qld) the First Appellant and/or the Second Appellant give security for the Respondents' costs of and incidental to the application for an extension of time and for leave to appeal and/or to any appeal in the sum of \$12,000.

2. Such security to be provided by way of payment into Court or in any other way approved by the Court or the Registrar of the Court of Appeal.
3. That such security be provided within 7 days of this order, in default of which the application for an extension of time and for leave to appeal and/or any appeal is stayed pursuant to Rules 673 (1), 674 (b) and/or Rule 774 (a) of the UCPR.
4. Liberty to apply to the Respondents (on the giving of three clear days notice to the First and Second Appellants) for the dismissal of the application for an extension of time and for leave to appeal and/or any appeal, with costs, pursuant to Rule 674 (c) and/or Rule 774 (b) of the UCPR, if the appeal is stayed pursuant to order 3 hereof.
5. That the costs of and incidental to this application be costs in the cause.