

SUPREME COURT OF QUEENSLAND

CITATION: *AET SPV Management Pty Limited v Gordon & Ors* [2013] QSC 137

PARTIES: **AET SPV MANAGEMENT PTY LIMITED ABN 67 088
261 AS TRUSTEE FOR THE LAWSON TRUST**
(plaintiff)

v

NOEL FRANCIS GORDON
(first defendant)

and

MANZ ENTERPRISES PTY LTD ACN 056 938 133
(second defendant)

and

**NEXUS TOWERS MANAGEMENT PTY LTD ACN 088
750 743**
(third defendant)

and

GPD SERVICES PTY LTD ACN 010 318 742
(fourth defendant)

and

GPD NO.2 PTY LTD ACN 112 025 162
(fifth defendant)

FILE NO/S: BS 7611/11

DIVISION: Trial Division

PROCEEDING: Civil Trial

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 8 May 2013

DELIVERED AT: Brisbane

HEARING DATE: 8 May 2013

JUDGE: Philip McMurdo J

ORDER: **1. The defendants pay to the plaintiff the amount of \$57,723,581.38, including interest of \$408,674.71.**

2. The defendants pay the plaintiff's costs of the proceeding to be assessed.

CATCHWORDS: GUARANTEE AND INDEMNITY – THE CONTRACT OF GUARANTEE – CONSTRUCTION AND EFFECT – GENERALLY – where plaintiff brought proceedings to recover amounts allegedly owed under guarantees given by each defendant – where provision of funds under guarantees is proved – where indebtedness of defendants has been established – whether the plaintiff is entitled to judgment for amounts owed by each defendant

COUNSEL: T J Bradley for the plaintiff
No appearance for the defendants

SOLICITORS: Ashurst Australia for the plaintiff
No appearance for the defendants

HIS HONOUR: This is the trial of proceedings brought to recover amounts said to be owing under guarantees given by each of the defendants. Yesterday the court was informed by the solicitors on the record for the defendants that they held no instructions to appear to defend the case and asked to be excused from attendance.

5 They were excused. When the matter was called this morning there was no appearance by or for any defendant. The plaintiff then led affidavit evidence as to the matters upon which it bears the onus, including evidence of the current debt. On the state of the pleadings most of the plaintiff's case was admitted. The defendants in particular pleaded an admissions of the execution of the instrument guarantee.

10 There is no pleaded case as to the efficacy of that document according to its terms. There is some suggestion in the defence that there may not have been consideration provided for the guarantees. However, the instrument was executed as a deed and in any case there is evidence of further advances made subsequent to the execution of the guarantee.

15 The plaintiff's case is to recover debts owing under three facilities. The defence admits the relevant agreements for two of those facilities and, as to the third of them, the matters alleged in the statement of claim are now admitted by the defendants' response to a notice to admit facts. The provision of the alleged finance under those facilities is proved, as is the default or defaults under each of the facilities.

20 Some of those matters, in any event, are the subject of deemed admissions because they are pleaded within an amended statement of claim, the service of which has been proved, and which are not the subject of any plea in response.

25 The defendants' pleading raised defences along the line that the plaintiff had not taken steps which would have seen it – in receipt of more of the moneys which are now claimed, such as, by the plaintiff refusing to agree to proposed sales of property which was mortgaged to secure these debts. Those allegations were put in issue by the plaintiff. In each case, they are matters which the defendants had to prove. The defendants have not sought to discharge that onus.

30 The position, then, is that the indebtedness of the principle debtors and, in turn, the defendants as guarantors has been established. In particular, the demands by the plaintiff for payment under the guarantees have been proved.

35 The present plaintiff was substituted as plaintiff pursuant to an order made by the Court on 30 January 2013, and its status as the legal assignee of these debts was pleaded within the amended statement of claim to which I have referred. There is no pleading in response to those allegations and the assignment is therefore deemed to have been admitted. In any case, it is established by the evidence.

40 The guarantee contains a provision in the usual form whereby the amount of the debt may be proved by a certificate by the lender. According to an affidavit of Mr Davis which exhibits such a certificate, the amount for which the plaintiffs now seek judgment is the amount which is owing by each of the defendants to the plaintiff. Therefore there will be judgment for the plaintiff against each of the defendants in the sum of \$57,723,581.38, which includes interest of \$408,674.71.

And it will be ordered that the defendants pay the plaintiff's cost of the proceeding to be assessed. I have signed a draft judgment which has been amended to refer to that amount of interest and placed that draft on file.

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