

COURT OF APPEAL

MUIR JA

**Appeal No 10571 of 2014
SC No 9956 of 2014**

**SUNSTATE FAST FOODS PTY LTD
ACN 130 675 071**

Applicant

v

**KUMAR HOSPITALITY PTY LTD
ACN 165 451 052**

Respondent

BRISBANE

FRIDAY, 7 NOVEMBER 2014

JUDGMENT

MUIR JA: On 29th October 2014, the primary judge declared that the applicant's purported determination on 3 October 2014 of a business contract, between the applicant and the respondent for the sale and purchase of a business was unlawful. He ordered specific performance of the contract with settlement to take place on Monday 10 November 2014. The applicant alleges that the primary judge denied natural justice to the applicant on the hearing of the application by denying the legal representative of the applicant the opportunity to be heard on the substantive matter for determination.

According to the applicant, the only matter addressed by the applicant's legal representative was a preliminary issue of whether the matter should proceed by claim and statement of claim rather than by originating application. It is also alleged that the primary judge failed to give

adequate reasons for his decision and thereby erred in law. Unfortunately, the transcript of the reasons is not presently available but there is an affidavit of Ms Slingsby, which I have given leave to read and file, which exhibit her notes of the judgment. If those notes are accurate, they plainly support the conclusion that the applicant has, at the very least, a fairly arguable case. It is also readily apparent that if the applicant is obliged to perform the contract, even though it has lawfully terminated it, it is likely to suffer irreparable harm. There is no appearance by the respondent.

The respondent's solicitors have informed the registry that they are not available to attend court but have intimated that they would be available on Monday morning, but having regard to the fact that settlement is due on Monday it is highly desirable that the applicant's rights be protected by a determination today. The respondent can, if it wishes, avail itself of the liberty to apply, which will be incorporated in the order. I note that the matter was called three times and there was no appearance for the respondent.

I order that enforcement of the order made by the Honourable Chief Justice on 29 October 2014 be stayed until the determination of the appeal against his orders or further order. The parties have liberty to apply. The costs of this application are reserved.