# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Mantonella Pty Ltd v Grancroft Pty Ltd & Ors* [2015] QSC 191 |
| PARTIES: | **MANTONELLA PTY LTD (ACN 069 012 531)**<br>(Plaintiff)<br>**v**<br>**GRANCROFT PTY LTD (ACN 660 074 038)**<br>(First Defendant)<br>and<br>**MAINRACE PTY LTD (ACN 056 537 814)**<br>(Second Defendant)<br>and<br>**BRIAN JORGENSEN**<br>(Third Defendant) |
| FILE NO/S: | SC 15 of 2015 |
| DIVISION: | Trial |
| PROCEEDING: | Application |
| ORIGINATING COURT: | Supreme Court at Cairns |
| DELIVERED ON: | 30 June 2015 |
| DELIVERED AT: | Cairns |
| HEARING DATE: | 1 April 2015 |
| JUDGE: | Henry J |
| ORDERS: | 1. The plaintiff give security for the defendants' costs up to the close of pleadings and disclosure in the sum of $35,000 in a form satisfactory to the Registrar of the Court on or before 21 July 2015.<br>2. Further proceedings are stayed pending compliance with order 1.<br>3. Liberty to apply on the giving of two clear business days in writing.<br>4. I will hear the parties as to costs at 10am 24 July 2015. |
| CATCHWORDS: | PROCEDURE – COSTS – SECURITY FOR COSTS – where the defendants seek an order for security for costs pursuant to r 671(a) – where the plaintiff company is impecunious – where the plaintiff company did not exist at the time of the alleged wrongdoing – whether the discretionary factors in r 672 favour the making of such an order – whether an order would stifle the proceeding – |

whether the plaintiff's impecuniosity is attributable to the defendants – whether the plaintiff's case lacks merit and prospects – where the order for security for costs is staged

*Limitation of Actions Act 1974* (Qld) s 27, s 38
*Uniform Civil Procedure Rules* 1999 (Qld r 671, r 672

*Bell Wholesale Co Pty Ltd v Gates Export Corp (No 2)* (1984) 52 ALR 176, 179, cited

COUNSEL: J Trevino for the 1st, 2nd and 3rd Defendants

SOLICITORS: Mr Alan Jorgensen in his capacity as Director of the Plaintiff
Miller Harris for the 1st, 2nd and 3rd Defendants

[1] By an application filed 26 March 2015, the defendants seek an order that the plaintiff provide security in the sum of $100,900.00 for the defendants' costs of and incidental to the proceedings.

**Background**

[2] The plaintiff company filed an originating application, in its capacity as trustee of the Jorgensen Family Trust, on 9 January 2015 seeking relief under r 643 of the *Uniform Civil Procedure Rules* ("UCPR") with respect to the ownership of shares in the Rainbow Motor Inn Unit Trust.

[3] The plaintiff's claim relates to a historic dispute between the plaintiff's director, Alan Jorgensen, and the third defendant Brian Jorgensen, who controls the first and second defendant companies. The plaintiff company, Mantonella Pty Ltd ("Mantonella"), did not exist in the era of the dispute.

[4] Alan and Brian Jorgensen are twin brothers. Together, they purchased the Rainbow Motel in October 1977.[1] In 1985, the Rainbow Motor Inn Unit Trust was formed for the purpose of holding the brothers' interests on trusts for their respective families.[2]

[5] The unit trust provided that the first defendant, Grancroft Pty Ltd ("Grancroft"), would act as trustee of the Rainbow Motor Unit Inn Trust, with Brian Jorgensen and the twins' mother, Patricia, appointed as directors. Alan Jorgensen deposes that as he was self-employed at the time, it was agreed he not be a director of Grancroft, in case it prejudiced future loan applications for the motel's development.[3]

[6] The Rainbow Motor Inn Unit Trust comprised 20 units. Nine of these units were held by Nicholas John Holdings Pty Ltd, a company controlled by Alan Jorgensen, in its capacity as trustee of the Jorgensen Family Trust. The remaining 11 units

1 Affidavit Alan Jorgensen filed 9 January 2015 [7].
2 Ibid.
3 Ibid.

were held by Nevgold Pty Ltd, a company controlled by Brian Jorgensen, in its capacity as trustee of the Brian Jorgensen Family Trust.[4]

[7] The current unit holders of the Rainbow Motor Inn Unit Trust are Nevgold Pty Ltd, with 55 per cent, and Mainrace Pty Ltd, with 45 per cent. Brian Jorgensen is also a director of Mainrace Pty Ltd. It is the circumstance under which Mainrace Pty Ltd came to hold the units previously held by Nicholas John Holdings Pty Ltd which is at the heart of this dispute.

[8] Alan Jorgensen represents the plaintiff, Mantonella, in these proceedings, purportedly in his capacity as its director.[5] He alleges that a dispute arose between the brothers in about August 1992 when Grancroft ceased making profit distributions from the unit trust to the beneficiaries, after six years of doing so. He claims this was done without consulting or notifying Patricia as co-director of Grancroft, and Alan as director of Nicholas John Holdings Pty Ltd as trustee for his family's trust.[6] Curiously, in his affidavit filed 9 January 2015, Alan Jorgensen deposes that following a profit distribution from the Rainbow Motor Inn Unit Trust in 1991 and before any dispute had arisen, it was decided prudent that further profit distributions be put on hold due to a pending property settlement with Alan's former wife, Sandra, and due to uncertainty over dealings with the ANZ Bank with respect to Alan and his company, Nicholas John Holdings Pty Ltd.[7]

[9] In 1989, Nicholas John Holdings Pty Ltd granted a fixed and floating charge over its assets in favour of the ANZ Bank. This charge included those assets held by the company in its capacity as trustee of the Jorgensen Family Trust.[8]

[10] In 1991, Nicholas John Holdings Pty Ltd filed its annual return with ASIC, the result of which indicated that the value of the company's assets equalled the sum of its liabilities, yielding a net asset position of $0.00.[9]

[11] In January 1992, the ANZ Bank appointed Robert Kus as receiver and manager of property of Nicholas John Holdings Pty Ltd described as "the whole of the assets whatsoever and wheresoever held by Nicholas John Holdings Pty Ltd as trustee of the Jorgensen Family Trust".[10] This included the nine units of the Rainbow Motor Inn Unit Trust.

[12] In April 1992, Robert Kus was replaced as receiver and manager by Peter Gerard Ryan.[11]

[13] Following an approach by Mr Ryan, the third defendant caused his company Mainrace Pty Ltd, as trustee of the Brian Jorgensen Family Trust No. 2, to enter into an agreement to purchase the nine units held by Nicholas John Holdings Pty Ltd for a price of $125,000.[12] The third defendant deposes this price was the

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4 Affidavit Brian Laurence Jorgensen filed 26 March 2015 [3]-[6].
5 As at 29 January 2015 he was not recorded as a Director by ASIC – Affidavit of Timothy Gerard McGrath filed by leave 30 January 2015.
6 Affidavit Alan Jorgensen filed 9 January 2015 [4], [11].
7 Ibid [12].
8 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 9 pp 19,38.
9 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 3.
10 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 4.
11 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 6.
12 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 [19].

ascribed value of the units under a Report as to Affairs completed by Alan Jorgensen in his capacity as director of Nicholas John Holdings Pty Ltd.[13]

[14] By late 1992 Alan Jorgensen was aware that Mainrace Pty Ltd, as trustee for the Brian and Evelyn Jorgensen Family Trust, had acquired the 45 per cent share of the unit trust held by Nicholas John Holdings Pty Ltd for $125,000.[14]

[15] Some 22 years later he initiated the present proceeding.

**Basis of application**

[16] The applicant's counsel argued security for costs ought be ordered pursuant to r 670 of the UCPR.[15] Rule 670 empowers the court, subject to rr 671 and 672, to order the plaintiff to give the security for costs "the court consider appropriate".

[17] The defendants seek the exercise of the Court's jurisdiction to make such order on the basis that it satisfies the prerequisites prescribed under r 671(a) which provides:

> **"671 Prerequisite for security for costs**
> The court may order a plaintiff to give security for costs only if the court is satisfied—
> (a) the plaintiff is a corporation and there is reason to believe the plaintiff will not be able to pay the defendant's costs if ordered to pay them;
> ..."

[18] This threshold is easily met. The plaintiff's application for a reduction of fees by a corporation, accompanying the filing of the originating application, shows the plaintiff to be impecunious.[16] The application, submitted by Alan Jorgensen in his representative capacity, reveals that the plaintiff holds no assets and has liabilities of $5,000. The plaintiff has no capacity to better its position as it does not trade, and if its action fails it will be unable to meet an adverse costs order.[17]

[19] There being reason to believe the plaintiff will not be able to pay the defendant's costs the court's discretion to order costs is enlivened. Rule 672 prescribes a number of discretionary factors the court may have regard to in deciding whether to make such an order. It provides, relevantly to the present case:

> **"672 Discretionary factors for security for costs**
> In deciding whether to make an order, the court may have regard to any of the following matters—
> (a) the means of those standing behind the proceeding;
> (b) the prospects of success or merits of the proceeding; …
> (d) for rule 671(a)—the impecuniosity of a corporation;
> (e) whether the plaintiff's impecuniosity is attributable to the defendant's conduct; …

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13 Ibid [22].
14 Ibid [4].
15 The applicant's solicitor also put the respondent on notice that s 1335 of the *Corporations Act 2001* (Commonwealth) authorizes such an order but it was not the subject of submissions here and the application falls to be considered, as argued, by reference to UCPR 670-672.
16 Court file document 2.
17 Outline of submissions of First, Second and Third Defendants (court file doc 28) [21].

> (h) whether an order for security for costs would stifle the proceeding; …
> (k) whether delay by the plaintiff in starting the proceeding has prejudiced the defendant; …
> (m) the costs of the proceeding."

**Discussion**

*Impecuniosity and means*

[20] A consideration weighing against the making of a security for costs order here is that such an order will likely stifle the proceedings because of the plaintiff's impecuniosity.

[21] That prospect is not mitigated by the means of those standing behind the proceeding. Alan Jorgensen, director of the plaintiff company, appears to be the person standing behind the plaintiff's proceeding. However he is not in a position to step out from behind the corporate shield and meet any adverse costs orders because he has no income other than a carer's benefit. He does not have the means to pay a costs order for the plaintiff. His evidence reveals that his four children are the other beneficiaries and two of them would not have the means to meet a costs order either.[18] While the absence of evidence regarding the means of the other two children[19] weakens the argument that an order will stifle the proceedings, the prospect of an order having that consequence nonetheless appears likely.

[22] A consideration less favourable to the respondent's position is that its impecuniosity has not been shown to be attributable to the applicants' conduct. The alleged conduct occurred some 22 years ago, a lapse in time which of itself would make it difficult to demonstrate a causal link with present impecuniosity. More significantly though, the plaintiff company, Mantonella, is not the company that held the shares of the Rainbow Motor Inn Unit Trust at the time of the events allegedly grounding its claim. It was Nicholas John Holdings Pty Ltd, not Mantonella, which held the units on trust for the Jorgensen Family Trust. Nicholas John Holdings Pty Ltd, which subsequently changed its name to Phoneflasher.com was deregistered by ASIC on 19 April 2008.[20] It resigned as trustee and Mantonella was appointed as trustee on 5 November 2004,[21] long after the critical events.

*Merits and prospects*

[23] The applicants place particular emphasis on the lack of merit and poor prospects of success of the respondent's claim.

[24] The obscure pleading of the plaintiff's case was the subject of some attention in the course of submissions. A copy of a draft defence was annexed to Brian Jorgensen's affidavit. The defence largely claims that the allegations contained in the plaintiff's statement of claim do not comply with the pleading requirements

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18 Affidavit Alan Jorgensen filed 9 January 2015 Ex AJ-1.

19 A matter which it was for the respondent to address, per *Bell Wholesale Co Pty Ltd v Gates Export Corp (No 2)* (1984) 52 ALR 176, 179.

20 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 13.

21 Affidavit Alan Jorgensen filed 9 January 2015 Ex AJ-5.

under rules 149 and 150 of the UCPR and are embarrassing. The defendants claim that without further particulars of the allegations contained in the statement of claim, the defendants are unable to properly plead to the allegations.

[25] A week after I reserved my decision the plaintiff filed an Amended Statement of Claim with the apparently misconceived intention[22] that it was proper for me to consider the matter by reference to it rather than the Statement of Claim as it stood when the matter was argued. In any event the causes of action relied upon in the Amended Statement of Claim remain obscure.

[26] The articulation of the relief sought does little to clarify matters. The plaintiff's action was commenced as an application seeking orders inter alia declaring the transfer of the 45% unit holding void, setting it aside and declaring that the Jorgensen Family Trust has continued to hold that interest. It also sought the taking of an account back to 1991.

[27] When the plaintiff filed a Statement of Claim, in response to an order by me about the future conduct of the proceedings, it sought inter alia:

> "A. A Declaration by the Court that the Jorgensen Family Trust is still the beneficial owner of the 9 x $1.00 Units in the RMIUT (Rainbow Motor Inn Unit Trust), which it has held since inception.
>
> B. An accounting of profits of the RMIUT since 30 June 1991, including interest.
>
> C. In the Alternate, the JFT as the beneficial owner from inception until 1st July 1992, it thereby is entitled to the 2 Profit Distributions from 1991/92 and 1992/93, plus interest.
>
> D. A Declaration that the unauthorized removal of Patricial Jorgensen as a Director on 30 November 1993 and as a Shareholder of Grancroft Pty Ltd on 4 April 2014, are both voided, thereby reinstating her prior status.
>
> E. A Declaration that Eve Jorgensen was invalidly appointed as a Director of Grancroft Pty Ltd on 12 May 1993 and thereby be removed forthwith.
>
> …"

[28] In its Amended Statement of Claim, filed after I reserved my decision, it now seeks, inter alia:

> "A. A Declaration by the Court that the Jorgensen Family Trust was ~~is still~~ the beneficial owner of the 9 x $1.00 Units in the RMIUT, as at 30th July 1992, which it ~~has~~ held since inception.
>
> B. An Order that the Second and Third Defendants, jointly and severally, pay the Plaintiff the amount due from RMIUT's Profit Distribution for 1991/1992 fiscal year calculated as 45% of the total Profit Distribution for that year, which will be evidenced by the RMIUT records and or the ATO tax returns filed that year.

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22 Apparent from his email to my associate.

C. That an Order for Equitable Compensation, or a commercial interest rate, be applied to that amount, at the option of the Plaintiff.

~~B. An accounting of profits of the RMIUT since 30 June 1991, including interest.~~

~~C. In the Alternate, the JFT as the beneficial owner from inception until 31st July 1992, it thereby is entitled to the 2 Profit Distributions from 1991/92 and 1992/93, plus interest.~~

D. A Declaration that the unauthorized removal of Patricia Jorgensen as a Director on 30 November 1993 and as a Shareholder of Grancroft Pty Ltd on 14 April 2014, are both voided, thereby reinstating her prior status as a director and shareholder of 9 shares in Grancroft as it was on 29 November 1993.

E. A Declaration that Eve Jorgensen was invalidly appointed as a Director of Grancroft Pty Ltd on 12 May 1993 and thereby her appointment voided and be removed forthwith."

[29] Despite these variations it appears the plaintiff's principal complaint, as emphasised in argument by Alan Jorgensen, remains that the transfer of the nine units to Mainrace Pty Ltd of 31 July 1992 was done in breach of trust and fiduciary duty by Brian Jorgensen, his wife and Grancroft. An associated complaint appears to be that this was facilitated by the wrongful removal of Patricia Jorgensen as a director of Grancroft.

[30] The latter complaint is weak on the known evidence. No evidence has been filed as to the actual circumstances of Patricia Grancroft ceasing to be a Director, let alone to demonstrate that any different course regarding the sale of the units would have been taken if she had remained a director.

[31] As to the breach of trust and fiduciary duty it will be recalled it was not Brian Jorgensen or Grancroft who sold the nine units. When Mainrace Pty Ltd acquired the units for $125,000 Nicholas John Holdings Ltd was in the hands of receivers and managers appointed by the ANZ Bank. Peter Ryan negotiated the transfer of the shares once held by Nicholas John Holdings Ltd in his capacity as receiver.

[32] There is no evidence in support of the plaintiff's allegation that the sale amount of $125,000 involved a gross undervalue. The applicant emphasises the Report as to Affairs of Nicholas John Holdings Ltd of 21 August 1992, signed by Alan Jorgensen, recorded the amount realisable on the "45% interest in Grancroft Pty Ltd" as being $125,000,[23] which was the amount it sold for. The applicant suggests this was an acknowledgement of the actual value of the nine units but that does not necessarily follow because the sale for that sum had occurred back on 31 July 1992.[24] The entry might merely have reflected the sale price, without regard to real value. Nonetheless there is no evidence that, contrary to the receiver's duty, he sold the nine units at an under value.

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23 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 11.

24 Affidavit of Brian Laurence Jorgensen filed 26 March 2015 Ex BLJ 9.

[33] This leaves the prospects of the plaintiff's case as presently known to be considered on the basis that regardless of whether the nine units were sold at an undervalue it was a conflict of interest for Brian Jorgensen and his wife and Grancroft to have allowed the sale to an entity controlled by Brian Jorgensen. It is difficult to assess the merits of the argument that there was a conflict on the state of the known evidence but the lapse of time in the pursuit of the argument obviously detracts from the plaintiff's prospect of success.

[34] It is clear that, despite only recently bringing the action, the plaintiff and Alan Jorgensen as its director, knew of the material facts relating to the alleged breaches soon after they occurred in 1992. In his oral submissions Alan Jorgensen, appearing without legal representation for Mantonella, conceded that he and, implicitly, Mantonella were aware of all the relevant facts and the six year limitation for bring an action to the court. However Alan Jorgensen explained he had only recently discovered that claims of fraud and conversion are not statute barred.

[35] As to this issue sections 27 and 38 of the *Limitation of Actions Act* 1974 (Qld) relevantly provide:

> **"27 Actions in respect of trust property**
>
> (1) A period of limitation prescribed by this Act shall not apply to an action by a beneficiary under a trust, being an action–
>
> (a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to the trustee's use.
>
> (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of a breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued. …
>
> **38 Postponement in cases of fraud or mistake**
>
> (1) Where in an action for which a period of limitation is prescribed by this Act –
>
> (a) the action is based upon the fraud of the defendant or the defendant's agent or of a person through whom he or she claims or his or her agent; or
>
> (b) the right of action is concealed by the fraud of a person referred to in paragraph (a); or
>
> (c) the action is for relief from the consequences of mistake;
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or, as the case may be, mistake or could with reasonable diligence have discovered it. …

[36] The orthodox interpretation of ss27 and 38 in the present context appears likely to be that articulated in Ong's *Trust Law in Australia*, Fourth edition, as follows:

> "Where a limitation period does apply to an action for breach of trust, the period does not commence, if the circumstances supporting the cause of action have been concealed from the plaintiff by the fraud of the defendant or his agent, until the plaintiff discovers the defendant's fraudulent concealment or could have discovered it with reasonable diligence. Even before the statutes so provided, equity had decreed to the same affect."[25]

[37] The contrary interpretation would be that the effect of s 27(1)(a) is no limitation period applies at all in respect of a fraud or fraudulent breach of trust, so that s 38 is irrelevant. This would have the odd consequence that even after the fraud is discovered no limitation period would commence. It is unnecessary to reach a final view of this issue and sufficient to observe for the purposes of assessing prospects that the orthodox interpretation is more likely correct.

[38] Here the plaintiff knew of the factual circumstances it seeks to characterise as fraudulent back in 1992.[26] Again, while it is unnecessary to finally determine the point the plaintiff's claimed past lack of legal knowledge is unlikely to assist its case in circumstances where it has long had knowledge of the relevant facts. I am fortified in that conclusion in light of the 32 other court cases which have in the past involved Alan Jorgensen or entities in which he was concerned[27] and, more particularly, in light of Alan Jorgensen's evidence that he actually did seek legal advice about the transfer back in 1992 but the advice was adverse to his prospects.[28]

[39] In the unlikely event the plaintiff's case were to overcome the above challenges it would still confront a powerful defence, inevitably founded on the long delay. The defendants have indicated that should this case proceed they will defend it not only on the basis it is out of time but also on the basis of laches and acquiescence. Given the 22 year delay in bringing the proceeding such defences appear to have a good prospects of success.

[40] For all of these reasons the plaintiff's case has a poor prospect of succeeding.

*Prejudice*

[41] The defendants' draft pleading identifies matters of obvious prejudice, namely that they have dealt with the property and its proceeds, altering their positions accordingly and have lost records relating to the transactions now complained of. No evidence was advanced about those aspects. It may reasonably be inferred that the delay must have occasioned some prejudice however in the absence of such evidence I regard the consideration of prejudice as neutral for present purposes. As

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25 P 273 (footnotes omitted).

26 In my orders of 1 April 2015 with respect to this application, I gave leave for the parties to provide any legal authorities that deal with an absence of understanding of the law by an adult in full knowledge of the facts as legitimate basis for overcoming delay. Such cases as were provided did not assist.

27 Ex 1.

28 Affidavit Alan Jorgensen filed 9 January 2015 Ex AJ-1.

has been seen however, the delay in pursuit of this action is very relevant to the merits and prospects of the plaintiff's case.

**Conclusion**

[42] The force of the considerations I have identified as relevant compel the conclusion this is an appropriate case in which to order security for costs.

[43] The defendants seek security for costs up to and including the first day of trial, the quantum of which is set out in the affidavit of the experienced solicitor of the defendants.[29] The items detailed in the costs estimate include the outlays and professional fees related to pleadings, disclosure, evidence and witnesses, preparation for hearing and the first day of trial. The estimated combined total for future outlays and professional fees is $100,900.00.

[44] Since the original application was filed on 9 January 2015, the plaintiff has appeared before the Court on four occasions. On two of these occasions, the plaintiff has had adverse costs orders made against it. Those costs are not part of the above-mentioned estimate of future cost.

[45] The matter is not yet ready for trial and, given the plaintiff's conduct of this litigation to date and the serious defects in the plaintiff's pleadings, there is every prospect that more hearings will be required before the defendants can identify and respond to the plaintiff's allegations and a trial date can be set. For these reasons, the defendants argue that the estimate as to quantum provided by them is conservative. I agree. Indeed in my view further interlocutory skirmishes, probably including a summary judgment application, are so inevitable prior to the close of disclosure that the schedule materially under-estimates that expenditure phase.

[46] However I am conscious that a significant factor in my determination of this application has been the respondent's apparently poor prospects of success. There exists the hypothetical, albeit unlikely, possibility that if I make an order for security for costs and it is met and the proceeding continues the plaintiff may eventually manage to articulate a case with better prospects and thus be in a better position to again argue whether it ought have to raise security for costs. That will be academic if my order now covers the forecast costs through to and including day one of the trial.

[47] The preferable, less oppressive course is to make a staged order with the logical initial stage being to the close of pleadings and disclosure rather than to day one of the trial. The above-mentioned costs schedule does not break down its costs forecast in that way however it provides some proportionate guidance as to an appropriate amount. I would be surprised if the applicant's claimable costs would not have exceeded 40 per cent of the total mentioned in their schedule by the close of pleading and disclosure.

[48] Taking a moderate approach I will require the plaintiff to give security for costs up to the close of pleading and disclosure in the amount of $35,000. If the matter lives

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29 Affidavit of Timothy Gerard McGrath filed 26 March 2015 [8].

on past that point or if there is a significant exceeding of that amount in the interim the applicant's ought have liberty to apply so as to seek further security.

**Orders**

[49] Further to the above-mentioned orders the proceeding should be stayed pending the provision of costs. This will have the effect that the time count for the filing of pleadings, frozen by me at the time of hearing, will not resume during the stay.

[50] It will be necessary to hear the parties as to the costs of this application.

[51] My orders are:

1. The plaintiff give security for the defendants' costs up to the close of pleadings and disclosure in the sum of $35,000 in a form satisfactory to the Registrar of the Court on or before 21 July 2015.
2. Further proceedings are stayed pending compliance with order 1
3. Liberty to apply on the giving of two clear business days in writing.
4. I will hear the parties as to costs at 10am 24 July 2015.