SUPREME COURT OF QUEENSLAND

CITATION:	*Sentinel Countrywide Retail Ltd v PC Emerald (Qld) Pty Ltd* [2015] QSC 348
PARTIES:	**SENTINEL COUNTRYWIDE RETAIL LIMITED ACN 601 712 707 AS TRUSTEE FOR THE SENTINEL COUNTRYWIDE RETAIL TRUST** (applicant) **v** **PC EMERALD (QLD) PTY LTD ACN 166 509 664** (respondent)
FILE NO:	11277 of 2015
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	7 December 2015
DELIVERED AT:	Brisbane
HEARING DATE:	4 December 2015
JUDGE:	Applegarth J
ORDER:	**The application is dismissed.**
CATCHWORDS:	EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – MANDATORY INJUNCTIONS – TO COMPEL PERFORMANCE – GENERAL PRINCIPLES – where the applicant is the lessor of a shopping centre – where the respondent operated a fast-food store in premises leased from the applicant – where the lessee's business was not profitable – where the lessee closed its business prior to the end of its lease – where the lessee sought to negotiate a surrender of the lease – where the lessor applies for a mandatory injunction requiring the lessee to keep its business open during the shopping centre's "Trading Hours" until the lease expires – whether damages are an adequate remedy – whether exceptional circumstances exist to justify requiring the lessee to carry-on its business *Retail Shop Leases Act* 1994 (Qld), s 51 *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1, cited

Diagnostic X-Ray Services Pty Ltd v Jewel Food Stores Pty Ltd (2001) 4 VR 632, cited
Netline Pty Ltd v QAV Pty Ltd (No 2) [2015] WASC 113, cited
Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia (1998) 195 CLR 1, cited
Ruffy Investments Pty Ltd v Payless Superbarn (Vic) Pty Ltd (2000) V Conv R 54-617, cited
Waterways Authority of New South Wales v Coal & Allied (Operations) Pty Ltd [2007] NSWCA 276, cited

COUNSEL:	M R Hodge for the applicant D M Logan QC and S J Carius for the respondent
SOLICITORS:	Russells for the applicant Blackston Lawyers for the respondent

[1] Sentinel Countrywide Retail Limited ("Sentinel") is lessor of a shopping centre at Emerald. PC Emerald (Qld) Pty Ltd ("PCE") is the lessee of shop premises at the centre under a seven year lease which has over five years to run. PCE operated a "Pizza Capers" store until the end of October 2015, when it closed its loss-making business. It sought to negotiate a surrender of the lease. Sentinel applies for a mandatory injunction requiring PCE to keep open the shop for business during the "Trading Hours" of the Centre as provided for by the lease.

[2] Courts rarely order the proprietors of loss-making businesses to continue in business under the threat that they will be punished for contempt if they do not. Exceptional circumstances are required to make such an order. The issue is whether Sentinel has shown such exceptional circumstances.

Relevant principles

[3] In the past, there was said to be a settled practice that courts never grant mandatory injunctions requiring persons to carry on business. In *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd*,[1] Lord Hoffmann examined the reasons for that practice and the principles, founded upon practical considerations, why the courts will apply that practice in "all but exceptional circumstances".[2] The other Law Lords in *Argyll* agreed with Lord Hoffmann. *Argyll* was approved by the High Court,[3] and has been applied by judges in this country considering applications for specific performance and injunctions compelling a lessee to trade.[4]

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1 [1998] AC 1 ("*Argyll*").
2 At 16.
3 *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998) 195 CLR 1 at 46 [78]–47 [79], 87 [191]–89 [193] ("*Patrick Stevedores*").
4 These include *Ruffy Investments Pty Ltd v Payless Superbarn (Vic) Pty Ltd* (2000) V Conv R 54-617 ("*Ruffy*"); *Diagnostic X-Ray Services Pty Ltd v Jewel Food Stores Pty Ltd* (2001) 4 VR 632 ("*Diagnostic X-Ray*") and *Netline Pty Ltd v QAV Pty Ltd (No 2)* [2015] WASC 113 ("*Netline*").

[4] An applicant for a mandatory injunction to compel performance of a specific clause of a contract, like any applicant for specific performance, seeks a discretionary remedy. The general principle is that specific performance will not be ordered when damages are an adequate remedy. It is unnecessary to address whether the inadequacy of damages is a "jurisdictional requirement" or a decisive discretionary consideration.[5] Lord Hoffmann in *Argyll* observed that the practice of not ordering a defendant to carry on a business is not entirely dependent upon damages being an adequate remedy. His Lordship stated that "the reasons which underlie the established practice may justify a refusal of specific performance even when damages are not an adequate remedy".[6]

[5] One frequently-stated reason for declining to order a party to carry on a business is that it would require "constant supervision by the court". However, the concept of constant supervision by the court by itself is no longer an effective or useful criterion for refusing a decree of specific performance.[7] The objection is not to court supervision, as such. Courts are well-accustomed to exercising supervision. The objection is to the possibility of "repeated applications for rulings on compliance" with orders requiring a party to "carry on an activity, such as running a business over a more or less extended period of time".[8] The only means available to the court to enforce its order is the quasi-criminal procedure of punishment for contempt. This powerful weapon is often "unsuitable as an instrument for adjudicating upon the disputes which may arise over whether a business is being run in accordance with the terms of the court's order."[9] As Lord Hoffmann explained:

> "the defendant, who ex hypothesi did not think that it was in his economic interest to run the business at all, now has to make decisions under a sword of Damocles which may descend if the way the business is run does not conform to the terms of the order. This is, as one might say, no way to run a business".[10]

In addition, repeated applications over a period of time mean that, in comparison with a once-and-for-all inquiry as to damages, the enforcement of the remedy is likely to be expensive in terms of costs to the parties and the resources of the judicial system.[11]

[6] Another objection to ordering a party to carry on a business may be imprecision in the terms of the order. If the terms of the court's order, reflecting the terms of the obligation, cannot be precisely drawn, the possibility of "wasteful litigation over compliance is increased."[12] So is the oppression caused by the defendant having to do things under threat of proceedings for contempt. However, precision is a question of degree.[13]

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5 *Netline* at [62], and see *Waterways Authority of New South Wales v Coal & Allied (Operations) Pty Ltd* [2007] NSWCA 276 [75]–[77], [95]–[97].

6 *Argyll* at 12.

7 *Patrick Stevedores* at 46 [79].

8 Ibid at 47 [79] citing *Argyll* at 13.

9 *Argyll* at 12.

10 At 13.

11 Ibid.

12 Ibid.

13 *Argyll* at 14; *Patrick Stevedores* at 46 [78]; I C F Spry, *The Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages* (Thomson, 7th ed, 2007) at 105 ("Spry").

[7] A further objection is that an order requiring a defendant to carry on a business may cause injustice by allowing the plaintiff to be enriched at the defendant's expense. The loss which the defendant may suffer through having to comply with the order (for example, by running a business at a loss for an indefinite period) may be far greater than the loss the plaintiff would suffer from the contract being broken.[14] Lord Hoffmann quoted the following paragraph from Professor Sharpe's article "Specific Relief for Contract Breach":

> "In such circumstances, a specific decree in favour of the plaintiff will put him in a bargaining position vis-à-vis the defendant whereby the measure of what he will receive will be the value to the defendant of being released from performance. If the plaintiff bargains effectively, the amount he will set will exceed the value to him of performance and will approach the cost to the defendant to complete."[15]

Whilst in such a case, the defendant, by its own breach of contract, has put itself in the position to be subjected to an extortionate demand, "the purpose of the law of contract is not to punish wrongdoing but to satisfy the expectations of the party entitled to performance."[16] Lord Hoffmann regarded a remedy which enabled the plaintiff to secure, in money terms, more than the performance due to be unjust.[17]

[8] In addition, it is not in the public interest for the courts to require someone to carry on business at a loss "if there is any plausible alternative by which the other party can be given compensation."[18] Requiring someone to carry on a loss-making business wastes resources and "yokes the parties together in a continuing hostile relationship."[19] The battle continues with complaints and a flow of communications between lawyers which is wasteful to both parties and the legal system.[20]

[9] The cumulative effect of these reasons and objections justified the settled practice not to order a person to carry on a business. The practice governing applications for specific performance and similar orders applies "in all but exceptional circumstances".[21]

[10] Some might argue that to make a court order in terms of a contractual obligation to carry on a certain business for the hours required by the lease is sufficiently precise. There would be no need to specify the level of trade, since the proprietor will want to operate the business efficiently and it will not be in the proprietor's interest to run it half-heartedly or inefficiently. This, however, "treats the way the tenant previously conducted business as measuring the extent of [its] obligation to do so."[22] The obligation depends on the language of the covenant and not upon what the tenant previously chose to do. Also, the longer the period the order applies, the more likely it is that trading practices and the

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14 *Argyll* at 15.
15 R J Sharpe, "Specific Relief for Contract Breach" in B J Reiter and J Swan (eds), *Studies in Contract Law* (Butterworths, 1980) 123 at 129.
16 *Argyll* at 15.
17 Ibid.
18 Ibid.
19 Ibid at 16.
20 Ibid.
21 Ibid
22 Ibid at 17.

method of operating the business change due to changes in surrounding circumstances and the economy. So it cannot be assumed that an order to carry on business during specified hours avoids disputes about the practical content of that order, the threat of contempt applications and court hearings over whether the intensity of trade and the scale of operations comply with the order.

[11] The potential costs of having to comply with a court order to carry on a loss-making business for a number of years, and the costs and risks of enforcement in the form of contempt proceedings, may be oppressive to a lessee. In practice, a defendant wishing to avoid disputes over compliance with the order and possible punishment for contempt is likely to "perform beyond the requirements of its covenant or buy its way out of its obligation to incur losses".[23] As Lord Hoffmann observed, "it is normally undesirable for judges to make orders in terrorem, carrying a threat of imprisonment, which work only if no one inquires too closely into what they mean."[24]

[12] Whilst the need for "constant supervision by the court" does not create an absolute bar upon the granting of injunctive relief, orders that require supervision over a substantial period or which present difficulties in monitoring and ascertaining performance should be discouraged because of their potential to generate repeated applications for rulings on compliance. As a result, account must be taken of the length of time over which performance may take place and the extent of difficulty that may arise in establishing whether the terms of the order have been complied with, and to weigh these matters against hardship that might be caused through a denial of relief.[25]

Facts

[13] In *Diagnostic X-Ray Services Pty Ltd v Jewel Food Stores Pty Ltd*,[26] a number of matters, taken together, were regarded as making that case exceptional. Those features are not present in this case. Instead, Sentinel submits that features of this case warrant the grant of specific performance by a mandatory injunction and make this case an exception to the settled practice, the justifications for which were explained by Lord Hoffmann in *Argyll*. Those submissions, and PCE's submissions that there are no exceptional circumstances, require reference to background facts before considering the submissions in greater detail.

[14] PCE is a one dollar company set up in 2013 solely for the purpose of being the lessee of the premises. PCE is part of the Retail Food Group ("RFG"). Retail Food Group Limited is listed on the ASX.

[15] PCE's lease of Shop 16B commenced on 1 February 2014 for a term of seven years. The lease states that the permitted use of the premises is:

> "The retail sale of pizza, pasta, salad, ice-cream, soft drinks, dips, calzones, ribs and chicken wings (trading as Pizza Capers and incorporating the national standard Pizza Capers menu as varied from time to time…"

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[23] Ibid.
[24] Ibid.
[25] Spry at 106.
[26] (2001) 4 VR 632 at 635–636.

[16] Clause 10.1 of the lease provides:

> "**Permitted Use**
>
> The lessee will use the Premises only for the permitted use and will at all times required by this Lease conduct its business for the permitted use in accordance with best practice and in a reputable manner."

[17] Clause 10.11 of the lease provides:

> "**Trading Hours**
>
> The Lessee will keep the Premises open for business during and only during the days and hours from time to time notified in writing by the Lessor to the Lessee as the designated operating hours for the Centre or if the core trading hours are fewer, then during the core trading hours of the Centre (**Trading Hours**). In this clause, core trading hours has the meaning defined by section 51 of the Act. The Lessee will not be required to keep the Premises open for business during any days and hours during which the conduct of the Lessee's business from the Premises is prohibited by law."

[18] There is no evidence before me about the designated operating hours for the Centre that had been notified in writing by the lessor. These may differ from the "core trading hours", as defined by s 51 of the *Retail Shop Leases Act* 1994 (Qld). Determining "the core trading hours" is not a simple matter and depends upon whether a resolution has been passed by the eligible lessees of the Centre and allowable trading hours under legislation.

[19] Sentinel is a trustee of an unlisted property trust, and owns a portfolio of neighbourhood shopping centres. It purchased the Emerald Village Centre in December 2014, after PCE commenced trade in the Centre. The anchor tenant in the Centre is a large Woolworths supermarket, and Sentinel was recently successful in securing lease renewals or new leases with existing tenants, including a 20 year lease with Woolworths. The Centre includes apparel and fashion stores, a pharmacy, other specialty stores such as a newsagent and some food stores. The food stores are Lenard's Poultry and a Donut King store within the mall area and a detached KFC store located on a street corner. The Pizza Capers store is relatively small, with an area of 64 square metres, and is outside the mall area. It is an external-facing tenancy located at the Curt Street entry to the Centre. There are a number of vacant shops in the Centre and its tenancy mix has changed with some shops closing.

[20] The operation of Shop 16B as a Pizza Capers store differed from many other shops in the Centre. Being a pizza shop, most of its business occurred when many other tenants in the shopping centre had closed. Trade was "highly skewed" towards evening trade, since 90 per cent of pizza purchases was for dinner. As a result, the main pedestrian traffic generated by Pizza Capers occurred during a time of day when most other tenants in the Centre had closed. Patrons of Pizza Capers did not need to walk past other shops to reach it.

[21] Sentinel has plans for a food precinct in the vicinity of Shop 16B, with the idea of having an alfresco dining area at one of the entrances to the Centre. It hopes to include another

major brand fast food outlet, and says that without Pizza Capers, the development of that precinct cannot currently proceed. The general manager of the corporate entity which manages Pizza Capers says she had no prior knowledge of the "food precinct" plans, and knows of no reason why such plans could not proceed without Pizza Capers.

[22] Shop 16B was operated as a "corporate store", being a store operated by a franchisor for the purposes of setting up and operating, with the potential to on-sell as a going concern to a franchisee.

[23] Between 1 July and 30 October 2015, the Pizza Capers business operating from Shop 16B ran at a total loss of $43,717.90. Its projected earnings for November 2015, December 2015 and January 2016 forecast a total loss of $31,024,28 during that period. In about October 2015 the manager of the business discussed its future viability with others within the RFG and made the commercial decision to cease trading. On 26 October 2015 Sentinel was told of PCE's intention to cease trading from the premises from 31 October 2015. A sign was posted in the front window of the store advising of its intended closure. Sentinel was told that the closure was because RFG had determined that the shop was "operationally unsound".

[24] Sentinel sent a notice to remedy breach of covenant and required the breach to be remedied by 5pm on Saturday, 31 October 2015. However, PCE continued with its plans to close the store. Perishable food was removed from the premises on 30 October 2015. PCE has no employees and is not currently trading. Despite this, it has continued to pay rent, and on 30 November 2015 paid rent and outgoings for December 2015. There was no evidence before me as to whether it or entities within the RFG intend to continue to pay rent. Instead, they have sought to negotiate the terms of a surrender of the lease.

Are damages an adequate remedy?

[25] Sentinel submits that damages are not an adequate remedy. PCE disputes this. Sentinel's case is that the closure of the store has a detrimental effect on it that is unlikely to be quantifiable. It argues that the closure of Pizza Capers "adversely impacts on the Centre's appeal to customers and may have a direct impact of taking customers away to another centre." Sentinel's general manager of its Portfolio Management, Mr White, who has great experience in retail property management, also refers to the impact of Pizza Caper's closure "on the other businesses within the Centre". He does not descend to any detail about what this impact may be. Instead, he refers to the fact that Sentinel "will have to deal with and explain the situation to other tenants". However, there is no evidence that Sentinel has been asked by other tenants to explain the situation over the last month since the store closed, or that if it was asked to explain the situation, it would not be able to do so. It could explain that PCE and those who control it made a commercial decision to close because the store was making a substantial loss and was expected to continue to make a loss.

[26] I accept Mr White's evidence that the manager of a retail centre aims to have the centre fully tenanted at all times. This is for obvious reasons, including the appearance of the centre, the fact that a fully-tenanted centre attracts more customers and that a partially empty centre is less appealing to customers and to prospective and current tenants.

Obviously, the closure of Pizza Capers will adversely affect the Centre's appeal to consumers of pizzas since there is no other pizza business at the Centre. However, there is no suggestion that the small Pizza Capers store was a drawcard in attracting a large number of customers to the Centre who were then inclined to shop in other stores. The situation is quite unlike an anchor tenant or the petrol station considered in *Diagnostic X-Ray Services*. The uncontradicted evidence is that 90 per cent of the Pizza Capers trade occurred at a time when most other stores were closed. There is no evidence that other tenants have complained about the Pizza Capers' closure. There is no explanation in the material as to why its closure, and Sentinel's ability to terminate the lease, would not enable Sentinel to use the space, either in its current configuration or in conjunction with the neighbouring vacant Shop 16A, for a fast food outlet or for some other retailer which would be attracted to having a store at such a location.

[27] In summary, there is little persuasive evidence that the closure of the Pizza Capers store will greatly affect pedestrian traffic to the rest of the Centre and other retailers within it. Proof of the effect of such a closure on the Centre in general and on the trade of other retailers may be difficult. However, such matters are capable of proof, and the quality of evidence which is required to prove loss is assessed according to the power of a party to produce it. I am not persuaded that any detrimental effect that the closure of the Pizza Capers store has upon Sentinel is unlikely to be quantifiable. It may be difficult to quantify with precision, but that does not mean that damages are not an adequate remedy.

[28] Sentinel's next submission is that there is a significant risk that if PCE is not required to continue to trade, Sentinel may not be able to recover the loss it suffers, even if it could be quantified, from PCE. This turns on the fact that PCE is a one dollar company and does not appear to have any substantial assets. It appears to have had the financial support of the RFG, but there is no evidence that the RFG will continue to fund it so that it is able to pay rent and able to pay damages.

[29] I accept that there is a significant risk that Sentinel may be unable to recover any damages award made against PCE. In this sense, damages are an inadequate remedy. However, the risk of not being able to recover damages (and, for that matter, rent owed to it) is a risk Sentinel assumed when it took the benefits and the burdens of a lease entered into with a one dollar company without, it seems, securing guarantees from other companies in the RFG or company directors, and relying instead upon the bank guarantee of $12,905.65 provided for in cl 8.12 of the lease. Sentinel assumed this risk in acquiring the Centre in circumstances in which it should be taken to have understood that there is a settled practice not to grant mandatory injunctions in cases like this. A sophisticated commercial organisation should have been "aware that the remedy for breach of the covenant was likely to be limited to an award of damages".[27]

[30] If an order was made for PCE to keep open Shop 16B for business during the "Trading Hours" of the Centre, and it was thereby forced to stay in a loss-making business, then in the absence of financial support from other companies in the RFG, it would be forced into liquidation or be forced to prioritise payment of creditors. It might make the commercial decision not to pay rent and to pay workers and trade suppliers instead. Leaving aside

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[27] *Argyll* at 18, and see *Argyll* at 16 about the assumption that persons entering into legal transactions will have been advised about a settled point of law or practice.

issues about preference between creditors, Sentinel would be left with an unpaid rent bill which it would be unable to recover from a one dollar company. The risk of Sentinel being unable to recover rent or damages arises from the fact that PCE is a one dollar company. Whilst an order requiring PCE to carry on business may avoid, at least temporarily, any damages which flow from PCE's closure of the business, forcing PCE to trade, exposes Sentinel to the risk of not being able to recover rent which might become unpaid. This assumes, as PCE's argument does in this context, an absence of financial support for PCE in the long-term. If damages are an inadequate remedy then it is because Sentinel made the commercial decision to acquire the Centre in circumstances in which PCE is a one dollar company.

[31] In summary, I am not satisfied that damages are an inadequate remedy because they cannot be quantified. They are capable of quantification. If the damages are not paid by PCE with financial support from the RFG, then this is a consequence which Sentinel should have reasonably contemplated in taking on a lease with a one dollar company in circumstances in which the settled rule is that, absent extraordinary circumstances, its remedy for breach of covenant is an award of damages.

Are there exceptional circumstances?

[32] If I had concluded that damages were not an adequate remedy, then it still would have been necessary to consider whether Sentinel had established the kind of exceptional circumstances required to depart from the settled rule. Sentinel submits that there are. One reason is that the order can be drawn with sufficient specificity, so that this will not be a case where there is likely to be an indefinite series of rulings about compliance. The order would simply require PCE to comply with its lease and to operate its pizza business during the "Trading Hours" of the Centre for so long as PCE is bound by the lease. The shop remains fitted out and it would be a matter for PCE to again employ staff and to resume trading. Sentinel also submits that PCE's forecasts of future losses may not be an accurate guide to the long-term future of the business. Also, it submits that, even assuming the shop's financial performance does not improve, the net difference between, on the one hand, ceasing to operate the business and continuing to pay rent and outgoings, and, on the other hand, continuing to operate the business, is not substantial.

[33] As noted, there is no evidence about the "Trading Hours" of the Centre, however, the issues that arise in the light of *Argyll* might be tested by reference to hypothetical trading hours of 9am to 5pm each week day. Although PCE has not projected future financial performance beyond January 2016, in the absence of any evidence to indicate that recent losses it made were due to some temporary factor, it is reasonable to assume that the store will continue to trade at a loss. It seems improbable that PCE would make the commercial decision to close the store, with the financial consequences that arise from such a decision, if the losses were only temporary.

[34] The essential issue is whether PCE should be required to undertake a loss-making business which, if the lease continues, will require it to do so for a lengthy period and possibly for another five years.

[35] PCE submits that there are no exceptional circumstances to justify such an order and that there are matters which would make it oppressive, if not contrary to public policy, to interfere with its legitimate commercial decision to end a loss-making venture. Directors owe statutory duties to exercise the required standard of care and skill, and compliance with those duties may require a director to make the business decision to cease trading. If PCE was compelled to remain open for business it probably would incur new liabilities to creditors and employees which, in the absence of financial support, it could not meet. This creates the possibility of a director engaging in insolvent trading and the order sought by Sentinel makes no allowance for such a contingency. An order should not place the directors of PCE in conflict with their statutory duties or jeopardise the position of third parties, such as employees and third party suppliers.

[36] It might be said that the risks of insolvent trading and innocent parties going unpaid in respect of debts incurred by PCE when it continues in business could be avoided by appropriate financial support from the RFG. However, the publicly listed company is not necessarily obliged to support subsidiaries within its group, and to do so may be contrary to the interests of the group as a whole, its shareholders and creditors. PCE itself is entitled to make a commercial decision to "cut its losses", and if the RFG does not honour PCE's existing obligations to pay rent and other debts, then the RFG will face certain reputational and other consequences. Presently, it has sought to negotiate the terms of a surrender of the lease.

[37] PCE did not act surreptitiously in ceasing to trade. It advised Sentinel of its intention to close the business and sought to negotiate a surrender of the lease on a commercial basis. Despite ceasing to trade, PCE has continued to pay all rent due and payable.

[38] To order PCE to carry on business, possibly for five years or more, by keeping the premises open during "Trading Hours" carries the potential for ongoing disputes and an unjust outcome whereby PCE and those who stand behind it are forced to negotiate a buy-out of the court-ordered obligation to continue to trade and, in doing so, pay Sentinel more than the loss which Sentinel will suffer if PCE ceases to operate the business. Assuming for the purpose of argument that "Trading Hours" start at 9am, then PCE would be required to open its business at that hour of the day, even if it sold no pizzas until lunch. Even if some accommodation was reached between Sentinel and PCE about sensible trading hours for such a business, PCE might seek to contain its losses by employing a skeleton staff. There would be the potential for disputes about whether the intensity of its activities and the manner in which it operated the store constituted compliance with the order. There is the possibility of "repeated applications" for rulings about compliance with the order.

[39] Sentinel has not shown the exceptional circumstances required to justify departure from the settled rule. Damages probably can be adequately quantified. There are important public policy considerations which justify a rule which does not require a company to continue a loss-making venture. These include the consequences for the directors of a company of limited worth of trading at a loss, when their duties as directors might require them to halt trading and avoid insolvent trading.

Conclusion

[40] In the absence of exceptional circumstances justifying a departure from the settled rule, I decline to make the order sought. The application will be dismissed. I will hear the parties about costs and whether there is any reason why costs should not follow the event.