SUPREME COURT OF QUEENSLAND

CITATION:	*Sean Rose Holdings Pty Ltd v LWP Technologies Ltd* [2016] QSC 16
PARTIES:	**SEAN ROSE HOLDINGS PTY LTD** ACN 163 611 863 (applicant) **v** **LWP TECHNOLOGIES LTD** ACN 112 379 503 (respondent)
FILE NO:	SC No 12084 of 2015
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	18 February 2016
DELIVERED AT:	Brisbane
HEARING DATE:	9 February 2016
JUDGE:	Ann Lyons J
ORDERS:	**1. I order that the application for an interlocutory injunction be refused.** **2. I order that the parties agree directions as to the future conduct of the matter and to regularise the proceedings.**
CATCHWORDS:	EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTIONS – RELEVANT CONSIDERATIONS – ADEQUACY OF DAMAGES – where the applicant and respondent are occupiers of adjoining properties – where the applicant operated a car wrecking yard and the respondent operated a proppant manufacturing pilot plant – where the applicant filed an application for an interlocutory injunction restraining the respondent from causing a nuisance from noise emissions emitted by the respondent's machinery – where the respondent submits that if the injunction was granted it would be required to relocate at significant expense and delay, affecting potential future opportunities, share prices and requiring the dismissal of staff – where the applicant's director alleges that the noise emissions affect him physically and mentally, affect other

employees and affect clientele – whether damages would be an adequate remedy

EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTIONS – UNDERTAKING AS TO DAMAGES – GENERALLY – where the applicant and respondent are occupiers of adjoining properties – where the applicant operated a car wrecking yard and the respondent operated a proppant manufacturing pilot plant – where the applicant filed an application for an interlocutory injunction restraining the respondent from causing a nuisance from noise emissions emitted by the respondent's machinery – where there is conflicting audiological evidence as to whether there is utility in any further noise reduction works on the respondent's machinery – where the applicant owns, as trustee, both lots on which it operates the car wrecking yard subject to a mortgagee and otherwise has paid up capital of $100 – whether the applicant's undertaking as to damages is sufficient

TORTS – NUISANCE – REMEDIES – INJUNCTIONS – where the applicant and respondent are occupiers of adjoining properties – where the applicant operated a car wrecking yard and the respondent operated a proppant manufacturing pilot plant – where the applicant filed an application for an interlocutory injunction restraining the respondent from causing a nuisance from noise emissions emitted by the respondent's machinery – where there is conflicting audiological evidence as to whether there is utility in any further noise reduction works on the respondent's machinery – where there applicant submits, and the respondent rejects, that the noise emissions are substantial and unreasonable – where the respondent submits that if the injunction was granted it would be required to relocate at significant expense and delay, affecting potential future opportunities, share prices and requiring the dismissal of staff – where the applicant's director alleges that the noise emissions affect him physically and mentally, affect other employees and affect clientele – whether the applicant has established a prima facie case – whether the balance of convenience favours the ordering of an interlocutory injunction – whether the undertaking as to damages is sufficient – whether the proposed injunction lacks precision

Active Leisure (Sports) Pty Ltd v Sportsman's Australia Limited [1991] 1 Qd R 301, considered
Australian Broadcasting Corporation v O'Neill (2006) 227 CLR 57; [2006] HCA 46, considered
Cambridge Credit Corporation Ltd v Surfers' Paradise Forests Ltd [1977] Qd R 261, considered
Cohen v City of Perth [1999] WASC 31, considered
NWL Ltd v Woods [1979] 1 WLR 1294, considered

	Shelfer v City of London Electric Lighting Co[1895] 1 Ch 287, cited
COUNSEL:	S Di Carlo for the applicant G Ritter QC for the respondent
SOLICITORS:	A Ace Solicitors for the applicant HopgoodGanim for the respondent

[1] The applicant and the respondent are occupiers of adjoining properties at Robson Street, Clontarf. The applicant company has operated a car wrecking yard from its premises for several years. The respondent company built a proppant manufacturing pilot plant on its leased premises in 2015. Since the commencement of the plant's full scale operation in August 2015 the applicant has complained about the noise caused by the three large extraction fans which operate at various times during the operation of the plant.

[2] On 27 November 2015 the applicant filed an originating application for an interlocutory injunction, restraining the respondent from causing an environmental nuisance from noise emissions caused by the respondent's machinery on its Robson Street property.

Background facts

[3] The applicant occupies lots 8 and 9 and the respondent occupies lot 10 on RP30494. Lots 8 and 9 have a contiguous boundary as do lots 9 and 10. Each lot is approximately one acre in area. All of the land is located in the Clontarf Industrial Estate which is within the "Industry Zone" of the 2005 Redcliffe Planning Scheme.

[4] The applicant's property consists an office and a workshop at the southern end of lot 8 with the rest of the two acres taken up by the storage of wrecked motor vehicles which are sold for spare parts to customers who attend both the office and the yard to obtain those parts.

[5] In January 2015 the respondent commenced construction of a pilot plant on lot 10 for the purpose of research and development. The pilot plant was completed in May 2015 at a cost of $3 million. The purpose of the pilot plant is to test and validate the viability of a "flyash-based proppant". Proppant is fine granular material, usually sand or ceramic, which is injected into shale rock to maintain the fracture whilst allowing oil and gas to flow. The fractures are thereby "propped' open allowing the oil and gas to flow to the surface. The respondent asserts that the product is in the developmental phase and that the plant does not actually manufacture commercial quantities of the proppant. Some noise abatement works were implemented at the time of the original installation of the plant at a cost of $25,000.

The nature of the plant at Lot 10

[6] The plant has three external extraction hoppers or blowers which are called "baghouses". The baghouses are situated on the outside of the plant and are free standing structures that are connected to the plant via an industrial blower pipe. The evidence indicates that from

September 2015 the respondent commenced a "scale up" program for both the Process and the Product. The evidence of the respondent's director and chief executive, Sean Corbin, is that since September 2015 the plant has been operating intermittently for the purpose of the program. He states that he does not expect the plant to operate at all after November 2017 when the lease expires.[1]

[7] The evidence indicates that the plant consists of a number of different parts.[2] It includes a mill which grinds flyash and bauxite and the mill operates a single baghouse. The granules are mixed to enlarge them and that process produces a product known as green "proppants". That green proppant is then added to the plant's dryer facility and one baghouse operates during this period, which can take three days. The product is then sieved and the product is heated inside a kiln which heats up to temperatures in excess of 1,250 degrees Celsius. The baghouses collect small particles. After the kiln process the product is re-sieved to separate the proppants into the desired size. The kiln operates in cycles and there have been two cycles each month since September 2015. During the kiln cycle, the kiln operates for 24 hours a day continuously for three to four days. When the kiln is in use two baghouses operate.

[8] Accordingly it would seem clear and indeed Sean Corbin specifically agreed at the hearing, that the greatest number of baghouses that will ever operate at the same time is two and that on occasions only one will be in operation. In between each cycle, there is a break where the kiln does not operate at all. The evidence indicates that the volume of the noise generated by the plant depends on the relevant state of the process, the highest volume of noise being generated by the operation of the two baghouses which occurs when the kilns are operating. If the kiln is not operating, then in sieving and mixing and granulating stages, there are no baghouses in use. When the mill is operating, one baghouse operates as it does when goods are dried.[3]

[9] The plant was closed from 9 December until 18 January 2016 for operational reasons but has now resumed operations.

The noise

[10] Sean Corbin states in his affidavit that the respondent company became aware of a noise complaint in August 2015 and at that point in time they had installed some further noise reduction around two baghouse fans which cost $15,000. Mr Corbin states that on 2 December 2015, the respondents received a Direction Notice pursuant to the *Environmental Protection Act* 1994 (Qld) which indicated that the Moreton Regional Council had imposed a requirement under the *Environmental Protection Act* that noise from the plant was to be no more than 50.5 decibels to 52.5 decibels. The Notice indicated that the Council had recorded noise emanating from the premises on 28 August 2015 at 60.7 decibels. Sean Corbin swears that after that notice was received the respondent company commenced further noise abatement work at a cost of $47,000.[4]

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1 Affidavit of Sean Corbin sworn 16 December 2015, 3 [19]-[27].
2 Affidavit of Sean Corbin sworn 16 December 2015, 4 [28]-[29].
3 Affidavit of Sean Corbin sworn 16 December 2015, 4 [30].
4 Affidavit of Sean Corbin sworn 16 December 2015, 7 [52]-[55].

[11] The respondent also engaged an acoustic engineer, Mr Paul King, to provide advice and a report on the plant's noise levels. That report is dated 15 September 2015 and is in evidence.

[12] On 24 September 2015 Russell Brown of Acoustics RB Pty Ltd conducted noise level measurements on the applicant's land and produced a report dated 7 October 2015 together with an addendum report dated 30 October 2015.

[13] Sean Rose is the director of the applicant company which owns the car wrecking yard premises at Robson Road, Clontarf. Mr Rose's evidence is that the baghouses emit an extremely loud noise causing noise emissions to enter his property. He states that when the baghouses are working, the noise is unbearable for him and his staff, particularly outside the shed which is his office. He states that the excessive noise levels have gone on for so long that they are taking a toll on him physically and mentally and on his staff. His evidence was that his staff complain about the noise and often go home at lunch time because they cannot handle the excessive levels.[5]

[14] Mr Rose also swears that he has had customers who have come to his premises to purchase parts make complaints about the noise. Furthermore, as customers have to wait until a part is removed by his staff some customers have left because they have not been prepared to stand and wait and endure the noise.[6]

Should there be an interlocutory injunction?

[15] The relevant principles for interlocutory injunction were outlined in *Australian Broadcasting Corporation v O'Neill*[7] by Gummow and Hayne JJ who held that on such applications the court addresses itself to two main inquiries, namely whether the plaintiff has made out a prima facie case in the sense that if the evidence remains as it is there is a probability that at the trial the plaintiff will be held to be entitled to relief. The second question is whether the inconvenience or injury which the plaintiff would be likely to suffer if the injunction were refused is outweighed by the injury which the defendant would suffer if the injunction were granted.[8]

Is there a prima facie case?

[16] In *ABC v O'Neill*, it was made clear that the phrase "prima facie case" does not mean that the plaintiff must show "that it is more probable than not that at trial the plaintiff will succeed; it is sufficient that the plaintiff show a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial".[9] The essence of the argument from the applicant is that there is a nuisance due to the noise emanating from the respondent's property because there is a substantial interference with the applicant's use and enjoyment of the property. I note that in this regard the respondent

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5 Affidavit of Sean Rose sworn 26 November 2015, 2-3 [14]-[21].
6 Affidavit of Sean Rose sworn 26 November 2015, 3 [22]-[25].
7 (2006) 227 CLR 57.
8 *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57, 81-82 [65], quoting *Beacham Group Ltd v Bristol Laboratories Pty Ltd* (1968) 118 CLR 618, 622-623 (Kitto, Taylor, Menzies and Owen JJ).
9 *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57, 81-82 [65].

argues that the relevant measure is not the subjective impact reported by the director of the applicant, but rather that there has to be unreasonable interference or a substantial interference

[17] In this regard, the applicant also relies on the initial reports by Acoustics RB Pty Ltd, previously referred to, which indicated there were noise levels at times of over 70 decibels. A report dated 2 February 2016 was also prepared by Matthew Fishburn, an acoustical engineer with Alpha Acoustics Pty Ltd.[10] His report indicates that at least at one location, which was five metres from the boundary of the respondent's property, there was a noise emission at 73 decibels, which was some 19 decibels above the noise criteria of 54 decibels.

[18] That report also set out noise reduction strategies which could be used, including moving the baghouses, the erection of a solid noise barrier, enclosing the extraction/baghouse fans and additional acoustic in line silencing. His report states in his opinion the current noise emissions from the respondent's plant are excessive and the respondent should meet a noise criteria of 54 decibels. He considers that various noise control strategies could be implemented to reduce the noise emissions.

[19] I accept that the question as to whether noise at a particular location exceeds a notional acceptable limit is a matter for expert opinion and that we have a variety of competing experts in this case. The respondent accepts that taking the evidence of the applicant at its highest, there is in fact one location where noise levels exceed an acceptable limit, but that it is in on the furthest boundary from the applicant's workshop. The respondent argues that such a noise does not constitute substantial or unreasonable interference and that the noise at that particular point is the equivalent to that found on a city street or just above that of a busy office. The respondent argues that this is industrial zoning and this is the industrial use of land and in the circumstances such a level of noise at one location on two acres is not substantial or unreasonable interference.

[20] It is also clear, as was noted in *Cohen v City of Perth*,[11] that a breach of a noise regulation does not necessarily mean there has been a nuisance. In that case the defendant had conceded that it was in breach of the noise regulations but did not concede that it was committing a nuisance. As Templeman J stated, "[d]ifferent considerations apply to a nuisance which involves more of a balancing exercise between competing interests than do the provisions of the Act and Regulations".

[21] Whilst it is difficult at this point to assess the evidence of the experts without having had them give evidence and be cross-examined, it must also be remembered that this is an application for an interlocutory injunction and not the final trial of the action.

[22] Having considered the various reports of the acoustic experts and the affidavit material I consider that that the applicant has succeeded in demonstrating that there is a prima facie case. This was conceded by Counsel for the respondent during the course of closing submissions.[12]

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[10] Affidavit of Matthew Fishburn sworn 2 February 2016, exhibit MF1.
[11] [1999] WASC 31, [12].
[12] Transcript of proceedings, 1-85, lines 1-8.

[23] I turn now to the second factor which must be satisfied, that is whether the balance of convenience favours the grant or refusal of the injunction.

Balance of convenience

[24] The principles the court must take into account when considering where the balance of convenience lies was set out by Lord Diplock in *NWL Ltd v Woods*:[13]

> "My Lords, when properly understood, there is in my view nothing in the decision of this House in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give full weight to all the practical realities of the situation to which the injunction will apply. *American Cyanamid Co v Ethicon Ltd*, which enjoins the judge upon an application for an interlocutory injunction to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial. By the time the trial came on the industrial dispute, if there were one, in furtherance of which the acts sought to be restrained were threatened or done, would be likely to have been settled and it would not be in the employer's interest to exacerbate relations with his workmen by continuing the proceedings against the individual defendants none of whom would be capable financially of meeting a substantial claim for damages. Nor, if an interlocutory injunction had been granted against them, would it be worthwhile for the individual defendants to take steps to obtain a final judgment in their favour, since any damages that they could claim in respect of personal pecuniary loss caused to them by the grant of the injunction and which they could recover under the employer's undertaking on damages, would be very small.
>
> Cases of this kind are exceptional, but when they do occur they bring into the balance of convenience an important additional element**. In assessing whether what is compendiously called the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding one way rather than the other at a stage when the evidence is incomplete. On the one hand there is the risk that if the interlocutory injunction is refused but the plaintiff succeeds in establishing at the trial his legal right for the protection of which the injunction had been sought he may in the meantime have suffered harm and inconvenience for which an award of money can provide no adequate recompense. On the other hand there is the risk that if the interlocutory injunction is granted but the plaintiff fails at the trial, the defendant may in the meantime have suffered harm and inconvenience which is similarly irrecompensable.** The nature and degree of harm and inconvenience that are likely to be sustained in these two

[13] [1979] 1 WLR 1294, 1306-1307 (Lord Diplock).

> events by the defendant and the plaintiff respectively in consequence of the grant or the refusal of the injunction are generally sufficiently disproportionate to bring down, by themselves, the balance on one side or the other; and this is what I understand to be the thrust of the decision of this House in *American Cyanamid Co v Ethicon Ltd*. Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial, is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other." (my emphasis)

[25] The applicant argues that the balance of convenience favours the granting of the injunction. In particular, it is argued that there are viable alternatives to the current noise abatement strategies, which have not been explored by the respondent, which would result in noise reduction. The applicant relies on Mr Fishburn's report which provides that noise reduction could be achieved by moving the baghouses and that there are number of other noise controls which are available to the respondent. The applicant also argues that as the respondent has $7 million in assets and $6.8 million in cash and only $300,000 of liabilities with no bank debt they would be able to absorb the cost of further noise abatement work, such as putting up a barrier or moving the hoppers to another position on the property. The applicant similarly points to the evidence that the respondent has previously indicated that there is no need to run the baghouses for an extensive period of time but now chooses to do so.

[26] Counsel for the applicant also relies on the evidence of the director of the applicant company Sean Rose[14] who states that he cannot escape from the noisy environment because his life savings and entire livelihood are tied up with his company. He also argues that he was operating his business well before the respondent moved next door to him in May 2015 and that his business and livelihood have been affected. He also states that the noise is ruining him mentally and physically and that he is suffering mental anguish. Reliance is placed on his statement that he dreads going to work and suffering throughout the day. The applicant also states that his employees are leaving work early and also there have been threats of workers' compensation claims because of the continued noise. He also states that there is evidence that customers have refused to stay while parts are removed because they are unable to tolerate the noise.

[27] Counsel for the applicant states that Mr Rose will give the usual undertaking as to damages and it is not disputed that the applicant company owns the property at Robson Street, Clontarf.

[28] Counsel for the applicant also argues that the respondent should have considered the noise effect on their neighbours before building the three baghouses which they knew would produce noise emissions. The applicant argues that the respondent has shown a significant lack of foresight and care and consideration for its neighbours given that they have

[14] Affidavit of Sean Rose sworn 26 November 2015.

already undertaken substantial noise abatement works since they initially constructed the plant. I note with some concern that there is indeed evidence to support this argument.

[29] Neither I am satisfied that the respondent has tried to resolve the matter with the applicant given the tone of the correspondence between the parties which is in evidence. This, regrettably, was also reflected in the high-handed manner in which the hearing before me was conducted by Counsel for the respondent.

[30] The applicant also argues that damages will not remedy the situation Mr Rose is facing because it will not make up for customers walking away or possible legal action by staff. It is also argued that damages cannot make up for the dread and suffering and mental anguish that he suffers.

[31] In terms of the respondent's argument as to the balance of convenience, the respondent essentially argues that the applicant's case is weak, that the decision to grant or refuse the injunction will in essence determine the substance of the matter in issue, that the applicant has not given a valuable undertaking and that damages will be an adequate remedy.

[32] Whilst the respondent argues that there has been delay in bringing the application, I am not satisfied in this regard given the delays which inevitably occurred in December 2015 and January 2106 due to matter not being able to be reached on the Applications List. This ultimately necessitated the matter being transferred to the Civil List for a one day hearing. Further, I accept the applicant's submission that any delay prior to the filing of the application is reasonably explicable on the basis of the applicant attempting to negotiate with the respondent and allowing the Council to investigate the respondent's premises. I do not consider that any delay which has occurred can be attributed solely to the applicant.

Where does the balance of convenience lie in this case?

[33] It is clear that the court is required to weigh the respective risks and to take into account the fact that injustice may occur as a result of deciding the case one way rather than the other. In the circumstances of this case, I am satisfied that the balance of convenience requires that the application for the injunction be refused.

[34] I am concerned that the granting of an interlocutory injunction may in effect determine the matter because the practical consequence of an injunction being granted may be that the respondent would have to close its factory and move. I accept that there is evidence from Mr King that any further noise mitigation would indeed be ineffectual or of doubtful benefit. Mr King's view is that the noise mitigation options are now exhausted and that a further reduction would only occur if the plant were closed and relocated.[15]

[35] I also accept that there is some indication that the cost of relocation would exceed one million dollars and that there would be delays and disruption should they have to relocate. No doubt such a delay may well be in the order of 6 to 12 months. Such delay and disruption could delay the respondent's ability to complete commercialisation and

[15] Affidavit of Paul Anthony King sworn 16 December 2015, [45]-[48].

marketing for its product. This would inevitably lead to a loss of income given the respondent's assertion that such a disruption would threaten a lucrative joint venture arrangement for commercial upscaling in India.

[36] The respondent also refers to the fact that delay and risk would negatively affect the respondent's share price and the value of the shareholders' investments, as well as the company's market capitalisation. In addition, such delay would require 10 staff members at the respondent's plant to be laid off.

[37] The affidavits of the applicant do not point to any evidence which indicates that the refusal of the injunction will cause any immediately quantifiable harm or hardship. In particular, there has been no quantification or even estimation of the economic loss to the applicant's business since the noise commenced in August 2015. If a quantified loss is deposed to in the future, it is clear that Sean Corbin attests to the fact that the respondent company has adequate resources to pay any such damages sum as is assessed.

[38] In addition there is no real evidence of the consequences on Mr Rose at this point in time other than a letter from a medical practitioner indicating an adjustment disorder. There is no evidence to date that this has resulted in Mr Rose being unable to work or any indication that such a condition is considered to be permanent.

[39] In any event there is no evidence that damages would not be an appropriate remedy in the current circumstances. In this regard I am nonetheless conscious of the words of Lindley J in *Shelfer v City of London Electric Lighting Co*[16] that "the Court has always protested against the notion that it ought to allow a wrong to continue simply because the wrongdoer is able and willing to pay for the injury he may inflict." I also acknowledge that Mr Rose deposes that he "cannot escape from this noisy environment because my life savings and my entire livelihood are tied up in the Applicant company."[17]

[40] The major concern I have, however, is that the applicant's undertaking cannot be considered as valuable. It is clear that the two lots are not held by Mr Rose but by the applicant company and that the properties were purchased by the applicant as trustee of a trust on 21 November 2014. Furthermore, there is clear evidence that the property is mortgaged to the Bank of Queensland. I also note that the applicant company has paid up share capital of $100.

[41] There is no doubt that concern about the value of an undertaking is a factor which can be taken into account in weighing where the balance of convenience lies. In *Cambridge Credit Corporation Ltd v Surfers' Paradise Forests Ltd*[18] Dunn J held that in considering the balance of convenience:

> "the Court should consider whether a plaintiff will be in a financial position to pay damages if they are found to be due, and that it may refuse an injunction either if damages will not be an adequate remedy or if the plaintiff will not be able to pay damages. In the circumstances of this case I am doubtful whether,

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16 [1895] 1 Ch 287, 315-316.
17 Affidavit of Sean Rose sworn 26 November 2015, 2 [15].
18 [1977] Qd R 261, 266.

> if I refuse to grant an injunction, damages would be an adequate remedy and I am in no doubt that the plaintiff will not be able to pay any damages to which the defendant may be held to be entitled. These are important matters for consideration in deciding how to exercise my discretion."

[42] My other concern is that the orders sought are for orders whereby the respondent is to be restrained from causing an environmental nuisance or nuisance within the common law meaning or from generating noise that interferes with the applicant's use and enjoyment of its land. What would such an injunction actually prevent the respondent from doing? I agree with the submission from Counsel for the respondent that such orders do in fact lack the precision which is required of an injunction and in the current form would in essence lead inevitably to the need for this court to supervise the injunction. In *Active Leisure (Sports) Pty Ltd v Sportsman's Australia Limited*[19] Cooper J referred to the importance of an injunction being framed in precise terms so that "the person enjoined knows exactly what is prohibited by the injunction and what conduct is permissible".

[43] Balancing all of the factors which I am required to take into account I am not satisfied that the balance of convenience favours the granting of the injunction. I order that the application for an interlocutory injunction be refused.

[44] This proceeding was erroneously commenced by way of originating application. Counsel advised me at the hearing of the application that a Statement of Claim had now been filed or would be filed expeditiously[20] and that time was available on the Civil List for the matter to be heard in May. Counsel also intimated that they would be in discussions regarding directions for the future conduct of the matter.

[45] I order that the parties agree directions as to the future conduct of the matter and to regularise the proceedings.

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[19] [1991] 1 Qd R 301, 308.

[20] However, as at 16 February 2016, no statement of claim has in fact been filed.