

IN THE DISTRICT COURT HELD AT BRISBANE No. 1925 of 1989

CIVIL JURISDICTION

BEFORE JUDGE FORNO Q.C.

7 FEBRUARY 1990

Copyright in this transcript is vested in the Crown.
Copies thereof must not be made or sold without the
written authority of the Chief Court Reporter, Court
Reporting Bureau.

BETWEEN:

G.E. CRANE & SONS LIMITED trading as WATSON & Plaintiff
CRANE

-and-

KEVIN DOUGLAS PASSINGHAM and MARISE First
AMANDA PASSINGHAM Defendants

-and-

BRIAN EDWARD COLEMAN and BARBARA Second
COLEMAN Defendants

RULING

HIS HONOUR: I am informed that the plaintiff's case in part is that it contracted with the defendants as natural persons as distinct from those natural persons being agents of a proprietary company. The plaintiff alleges that the defendants trade as "New World Constructions". That would be irrelevant if as alleged the contract or contracts sued upon were between the plaintiff and the natural persons. It would not be irrelevant if the natural persons were being sued as partners in a partnership trading as a firm styled "New World Constructions".

The evidence tendered so far would seem to indicate that the plaintiff's case really is that it is the

situation that the persons being sued are being sued as partners in a partnership. Some indication of that may be taken from the fact that Marise Amanda Passingham and Barbara Coleman are joined as defendants and the evidence so far does not implicate them in any way.

If ultimately this is the plaintiff's case it seems to me the plaint is defective. I make this point now since I am asked by the plaintiff for certain rulings regarding the pleadings of the defendants. This arose out of an objection by the defence to evidence being led by the plaintiff which I am informed would be evidence of the practice of the plaintiffs when contracting with a company. I assume that evidence would be that that is different from that adopted when dealing with an individual natural person.

I assume I would be asked to infer from that that the defendants were or some of them represented themselves as contracting as natural persons but more likely, having regard to Exhibit 7 and what I have already referred to, I would be asked to infer that one Passingham and one Coleman, apparently the male defendants, represented they were contracting on behalf of a firm "New World Constructions".

The evidence it seems to me is admissible for this purpose, as being some circumstantial evidence of what is sought to be proved and I so hold. Of course, the weight of it either alone or together with other evidence is a matter for me later to determine.

The joinder in the plaint of Marise Amanda Passingham and Barbara Coleman seems to me, as I have already indicated, to be consistent with an allegation that the defendants were partners in New World Constructions. Of course, I may be wrong in this assumption - I have not heard all the plaintiff's evidence - but I would be most surprised if I was not correct having heard the plaintiff's opening (albeit brief).

The plaintiff's counsel explained the purpose of the evidence and referred to discussions with defence counsel

to the effect that it was the defendants' case that the contracts were between the plaintiff and a proprietary company if at all, not with his clients. He suggested the filed defence was defective as it fails to allege the above and consists merely of denials.

Defence counsel has indicated to me he would propose pursuing such a position in cross-examination and that it is not necessary for any allegation to the effect indicated, since it is plain from the plaintiff's case that orders were being made and accepted from a proprietary company.

I am satisfied, having regard to the rules providing for the substance of a defence, that the defence in this case (if what is indicated to me as being proposed to be pursued is correct) - I am satisfied in that event that the defence is defective and any pursuance of the stated position would be irrelevant in the present state of the pleadings.

Both pleadings it seems to me appear at this stage anyway to be defective and it is a matter for the parties to make such application to me as each wishes to resolve the position.
