

SUPREME COURT OF QUEENSLAND

No 1476 of 1992

CIVIL JURISDICTION

MACKENZIE J

MARY C REDFERN and WILLIAM PAUL COLEMAN

Plaintiffs

and

THOMAS WILLIAM JONES

Defendant

BRISBANE

..DATE 14/05/93

..JUDGMENT

HIS HONOUR: The order in this matter is that the application will be dismissed with costs to be taxed.

I publish my reasons.

IN THE SUPREME COURT OF QUEENSLAND Writ No. 1476 of 1992

Before Mr. Justice Mackenzie

[Re: Redfern & Others]

BETWEEN:

MARY C REDFERN and WILLIAM PAUL COLEMAN

Plaintiffs

- and -

THOMAS WILLIAM JONES

Defendant

REASONS FOR JUDGMENT - MACKENZIE J.

Judgment delivered 14/05/93.

CATCHWORDS:

Counsel: M. Amerena for applicant defendant
P. Carter (solicitor) for respondent
plaintiffs

Solicitors: Walsh Halligan Douglas, as town agents for
Macdonnells, for applicant defendant
Carter Capner for respondents

Hearing 23 April 1993

Date:

IN THE SUPREME COURT OF QUEENSLAND Writ No. 1476 of 1992

Before Mr. Justice Mackenzie

[Re: Redfern & Others]

BETWEEN:

MARY C REDFERN and WILLIAM PAUL COLEMAN Plaintiffs

- and -

THOMAS WILLIAM JONES

Defendant

REASONS FOR JUDGMENT - MACKENZIE J.

Judgment delivered 14/05/93.

The plaintiffs are United States' citizens. They commenced action by specially endorsed writ to recover a sum allegedly owing under a guarantee executed by the defendant. The defendant was served within the jurisdiction and remains here.

The transaction underlying the action is one in which a Californian company entered into a transfer and royalty agreement. The defendant is alleged to have given a

guarantee with respect to the obligations of that company under the agreement to pay \$US3,000 by monthly instalments. The document according to the material before me was executed by the defendant in California and by the plaintiffs in Tennessee.

The defendant filed a conditional appearance on 17 November 1992. The defence including an objection to the Supreme Court of Queensland as an appropriate forum was delivered on 1 December 1992. The defence raises fundamental issues about the enforceability of the guarantee which, it appears to me, will be litigated irrespective of the forum in which the action is ultimately tried.

No steps have been taken to have a determination of the question of forum non conveniens made. Presumably that will involve the application of factors referred to by the various Judges of the High Court in Oceanic Sun Line Special Shipping Co. Inc. v. Fay (1988) 165 CLR 197 and further explained in Voth v. Manildra Flour Mills Pty. Ltd. (1990) 171 CLR 538. Such an application should not involve extensive preparation on the merits of the defence. Until the question of forum is resolved it is speculative whether it will be necessary for costs of the kind deposed to, to be incurred within the jurisdiction.

In my opinion the application for security of costs brought at this time is premature. The application will be dismissed with costs.