

CHAMBERS

JONES J

CAIRNS HARDWARE CO

Plaintiff

and

CHASMAC ENGINEERING AND SALES PTY LTD

Defendant

CAIRNS

..DATE 02/02/99

JUDGMENT

HIS HONOUR: In this matter the applicant for the winding up order Cairns Hardware Company Pty Ltd, when the matter came on for hearing sought to have the application dismissed. It does so apparently on the basis that it has reached some accommodation with the debtor in respect of that particular debt.

Mr McGuigan of Farrellys, appearing on behalf of the applicant, has quite properly drawn to my attention that in response to the advertisement two creditors of the debtor company have indicated an interest in the proceedings. The first of these, Work Cover Queensland, lodged a notice of intention to appear dated 22 January, 1999 and the second, the Australian Tax Office by letter to Farrellys dated 1 February, 1999 indicated those would not appear, but that they may wish to make an application at some future time.

In the end result Work Cover Queensland did not appear at the time of the application coming on for hearing. In these circumstances it seems to me appropriate to dismiss the application made by this particular applicant, but to delay its effect so that the other creditors, who have shown interest, may seek to be substituted on becoming aware of the present applicant's decision not to proceed with the application.

Mr McGuigan you will undertake to notify those two parties will you?

MR MCGUIGAN: Yes, Your Honour. I actually formally have to do something with the-----

HIS HONOUR: Yes, the security-----

MR MCGUIGAN: -----Australian Securities which is-----

HIS HONOUR: That is right.

MR MCGUIGAN: -----that an order was made and-----

HIS HONOUR: Yes, okay.

MR MCGUIGAN: -----I have to advise them of the terms of the order.

HIS HONOUR: Upon Mr McGuigan's undertaking that he will notify Work Cover Queensland and the Australian Tax Office of this order, I order that the application will be dismissed on 16 February, 1999 unless prior to that date an application is made by intending creditor for a different order.

Is there any requirement for a costs order to be made?

MR MCGUIGAN: Not in my particular - there is provision there even if it is dismissed to apply for costs, but that is not my intention.

HIS HONOUR: Okay, yes thank you Mr McGuigan. Well that wraps that up from your point of view does it not?

MR MCGUIGAN: Yes, thank you. Thank you, Your Honour.

HIS HONOUR: Thank you, very much.

MR MCGUIGAN: For the moment.

HIS HONOUR: Yes, okay.

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