



Transcript of Proceedings

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Date 13 / 5 / 02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No S10902 of 2001

BEAUTRANS PTY LTD
ACN 077 554 851 AND OTHERS

Plaintiffs

and

CSR LIMITED
ACN 000 001 276

Defendant

BRISBANE

..DATE 07/05/2002

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The plaintiffs in this action make an application for directions that there be a trial of some separate or preliminary issues.

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Essentially, they are that questions of construction of the relevant contracts and also a question of rectification be determined prior to the determination of the other issues raised on the pleadings.

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The defendant has sought an order for security for costs. The circumstances surrounding the action were summarised by me in reasons I gave on an earlier application on 11 January 2002 and I do not propose to repeat what I there said.

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Mr Doyle SC, who appears for the defendant, resists the application for the trial of separate issues on a number of grounds. One was that there would be little utility in the determination of the matters proposed for early determination by the plaintiffs having regard to the fact that the plaintiffs sought other - or even perhaps identical - relief in reliance on alleged breaches of the Trade Practices Act. That was a matter which, initially, caused me concern but Mr O'Shea, who appears for the defendants, has informed me that if there is to be a trial of preliminary issues, the plaintiffs will abandon the Trade Practices Act claim and I will proceed on that basis.

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Other arguments Mr Doyle advanced were that (a) a separate trial would not lead to a resolution of the proceedings as a

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whole; (b) it was part of the defendant's case that even if 1
breaches of contract could be made out, the plaintiffs would
not be able to show loss and damage; and (c) the plaintiffs'
inability to show loss and damage would be a matter which
would be relevant to the question of whether they should get 10
any equitable relief at the conclusion of the trial.

He submitted that regardless of how the preliminary issues
were determined there would still need to be an extensive
trial which would go into matters such as the defendant's 20
business practices, the justification for them and the
impact of those practices on the financial positions of the
plaintiff.

He submitted that all that would be achieved by the orders 30
sought was a "fragmentation" of proceedings and the
likelihood of additional expense and delay arising out of
appeals from the preliminary determination. There is
considerable force in those submissions.

Experience tells one that the splitting of trials seldom 40
leads to a very satisfactory result.

However, these questions, in the end result, are ones for
judgment based on a weighing of the likely advantages and 50
disadvantages. Of concern to me are the dimensions and
estimated cost of a trial which ventilates all issues raised
on the pleadings.

It seems to me that there is something here to be gained
from an expeditious hearing of preliminary issues, a
determination of which may well bring these proceedings to
an end. That is if the determination is unfavourable to the
plaintiffs. If it is not, then I think that there is still
much to be gained; the parties will have a much clearer
focus on the issues to be determined and the facts to be
proved; the length of the second hearing can be
substantially reduced and the prospects of a negotiated
settlement considerably enhanced. For those reasons I
propose to make an order along the lines sought.

As for security for costs, if there were to be a hearing of
all issues I would have difficulty in seeing how the
plaintiffs could resist an order for security for costs.
Their material, though reasonably extensive, does little to
actually show the existence of assets which would provide
any degree of protection to the defendant, were it to be
successful in the action.

The plaintiffs' best position is that there happens to be
of them, that they all have contracts with the defendant,
that those contracts have some value and that there would, I
think, be not a great deal of likelihood that the defendants
would permit enforcement proceedings to take place with the
windings up of their respective companies and the loss of
contractual rights, in circumstances in which the
defendant's claims against the plaintiffs for costs was
relatively small.

The costs to date are assessed on behalf of the defendant at 1
\$68,118 and the further assessment of a trial of preliminary
issues is to the order of \$105,000. The total then is
estimated at \$170,000-odd, in rough terms. In those
circumstances, for the reasons I have advanced, it does not 10
appear to me that the plaintiffs will not be able to meet
any costs order made against them in respect of the
preliminary hearing, which I am about to order.

I take into account in that assessment that some of the 20
costs incurred thus far are apportionable, not merely to any
preliminary hearing, of course, but to the general cost of
the litigation. Accordingly, on those grounds, and also
having regard to my previous findings that the plaintiffs'
case is not an unarguable one, I exercise my discretion 30
against making an order for security for costs at this
stage.

I propose, however, not to dismiss the application but to
adjourn it so that it can be re-enlivened if circumstances 40
change. It is possible that circumstances may change even
before the preliminary hearing but, of course, they will
necessarily change after the preliminary hearing,
particularly if the defendant is then successfully.
Accordingly, I adjourn the application for security for 50
costs to a date to be fixed.

I can either reserve the costs of that or order that the
costs of the application be costs in the cause.

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HIS HONOUR: I order that the costs of and incidental to the application be the parties' costs in the cause. I order that the costs of and incidental to application for directions be the parties' costs in the cause.

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HIS HONOUR: I order that there be a separate trial of the issues of construction of the contract or contracts described in the statement of claim and alternatively rectification of such contract or contracts which are identified in:

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(a) paragraphs 10 and 10A of the amended statement of claim; and

(b) paragraphs 4(b), 5(d), 7, 8, 9, 10, 12, 20, 24, 26 and 27(b)(i) of the defence: and

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(c) paragraphs 2, 3, 4 and 5 of the reply.

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HIS HONOUR: I give leave for the plaintiffs to amend the claim in accordance with annexure A to the written submissions made today. I further give leave to the plaintiffs to amend the statement of claim in order to delete the allegations based on a breach of the Trade Practices Act 1974.

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