



State Reporting Bureau

TRANSCRIPT OF PROCEEDINGS

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Date 16/10/2002

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MOYNIHAN J

No S28 of 2002

FARZAD NOORAVI and
HOMA NOORAVI

and

MAYTREND PTY LTD

[Handwritten signatures and date 8/10]

Plaintiffs

Defendant

CAIRNS

..DATE 03/10/2002

..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 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: This is an application to stay an order relating to the occupation of premises earlier this week, the plaintiffs having succeeded in obtaining the relief.

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The notice of appeal includes the statement that the appellant be allowed to adduce further evidence at the hearing of the appeal. There is nothing in the material to indicate what that further evidence might be or to indicate any prospect of satisfying the requirements of a successful appeal on the ground of fresh evidence.

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The grounds of appeal 1 to 4 are really assertions in different ways, that the appeal should succeed, without being forthcoming as to the basis of demonstrable error which might found that consequence. Ground 5 relates to the conduct of a mini trial without discovery or the opportunity for cross-examination, which manifests a failure to comprehend the nature of the proceedings by way of summary judgment.

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Ground 6 is the defendant would have been entitled to the remedy that it sought and the factual basis, presumably, of the defendant's claim was not fanciful and had substance. That, again, appears was the point in the application by the plaintiff for summary judgment, which was successful for reasons given at the time.

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There is a ground that the defendant's statements of facts
is not contradicted by the documents or other material on
which it was based. A number of views as to what that might
mean are open, but the fact is that I have expressed the
view that I was satisfied that the plaintiff satisfied the
requirements of summary judgment in circumstances where the
defendant had not met the case so as to satisfy the tests
which would have led leave to the defendant being granted.
There is an assertion that the defendant's claim was fit for
trial.

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There was in support of the application for a stay
reassertion of the grounds that the rent in question was not
payable because there had been a payment of rent in advance,
so it was really a reassertion of propositions that were put
the other day. I think there is some merit in the
submissions of Mr Priestly, for the respondents to the
application for a stay, that indeed the material now is
capable of demonstrating that there was not a payment in
advance, as is repeatedly asserted on the applicant's behalf
without it being effectively demonstrated. There is no
offer to pay rent despite the continued occupation of the
premises in circumstances where the summary judgment
application has been successful.

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The person behind the applicant company is a man called
Richard John Slack. I should say that this application
takes its place in a plethora of litigation which is before
this Court in various forms. The material shows that there

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are outstanding costs orders against Mr Slack in respect of
various matters; and that the outstanding moneys to date,
including those costs orders, are of the order of \$52,000.
There is a bankruptcy petition against Mr Slack. His
application to have the bankruptcy notice set aside has been
dismissed by a Federal Magistrate and there is an appeal
against that decision.

It is submitted that Mr Slack's indebtedness is not, so far
as the costs are concerned, in relation to these
proceedings. As I say, he is the person behind the
defendant and that is the position. It is said, that may
well be so; that there was a business being conducted in the
premises and that if the applicant is no longer in
occupation, that it will have an inability to generate funds
and that business will be lost. I am not persuaded that the
material demonstrates a good arguable case on appeal, so I
reiterate, if it is to embrace fresh evidence, the material
is not forthcoming in respect of that.

I appreciate that the matter has been prepared and come on
as a matter of some haste, but the problem repeatedly
appears to arise in these applications that it is not
appreciated that if the Court is to act, it has to act on
precise facts which are established on an acceptable basis
rather than on the basis of mere assertions.

I have already mentioned that the financial implications of
a stay and the fact that nothing has been done to address

the position in which the respondents may find themselves if
there is a stay. There has been, as I say, no offer which
is designed to address those considerations. It may be that
if a good arguable case was demonstrated, it might be
considered imposing a stay on terms of conditions by
security. In my view, that consideration does not arise to
have that consequence because there is no good arguable
case. The fact is, in the event that the appeal is
ultimately successful, no doubt the applicant will be able
to pursue whatever remedies might be open as a consequence
of that outcome. That would be a factor of little weight if
all else was equal in respect of this stay but, as I have
already indicated, really none of the criteria for founding
the stay have been established. In other words, I am not
persuaded there is a good arguable case. The applicant will
no doubt be disadvantaged, but in terms of competing
advantage and disadvantage to the respondent to the
applicant, that balance appears to favour the respondent.

I therefore dismiss the application.

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HIS HONOUR: I order that the applicant for a stay pay the
costs to the respondent of that application, to be assessed
on the standard basis.
