



## Transcript of Proceedings

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Date 17/10/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 488 of 2002

KYM ANTHONY KRUSE

Applicant

and

PONDBURY PTY LTD  
(ACN 076 524 251)

First Respondent

and

JAMES EARL BRYAN and  
NICOLETTE BRYAN

Second Respondents

and

AUSTRALIAN SECURITIES AND INVESTMENT  
COMMISSION

Third Respondent

CAIRNS

..DATE 14/10/2002

## 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 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: This is an application by the plaintiff in an  
action for the re-registration of a company, which was  
deregistered on the 30th of June 2002.

The plaintiff claims against the company and persons who were  
associated with the company for damages for negligence in  
respect of an injury which the plaintiff alleged he suffered  
when undertaking yoga classes either by the company, first  
respondent, Pondbury Pty Ltd, or by the person who was working  
for the company, or on his own account, James Earl Bryan, the  
first named second respondent.

The yoga classes were conducted under a business name,  
Ashtanga Yoga Academy. That business name was owned by the  
respondent company. The principals of the respondent company  
would appear to be the second named respondents.

Inquiries were made as to the insurer of the business and this  
has lead to correspondence passing between the solicitors for  
the applicant and solicitors for the insurance company, which  
lead ultimately to the insurer, by letter of the 11th of  
October 2002 (Exhibit 1), claiming that the policy insures the  
second respondents and not the respondent company.

Whilst these issues remain in doubt, it is appropriate that  
the plaintiff have the opportunity to fully litigate his  
claim. This can only happen if the corporation is reinstated.

The applicant was injured on the 6th of November 1999 and notified his claim to the company soon after that date, or certainly prior to the company being deregistered.

In those circumstances it seems to me that the applicant has established himself as a person who is aggrieved by the deregistration, and whilst the claim against the company remains undetermined, it is appropriate that the company's registration be instated.

That having been found, the requirements of 601AH(2) of the Corporations Act appear to be satisfied and I would therefore order that the company be reinstated.

I will direct also that the Australian Securities and Investment Corporation be notified the outcome of these proceedings.

The applicant also seeks leave, pursuant to the Personal Injuries Proceedings Act 2002, which by virtue of section 6 appears to apply to injuries which occurred prior to the 18th of June 2002. The Act requires that notice of the injury be given to a respondent within nine months of the accident, or within one month of seeing a solicitor. Both those time limitations had passed, of course, before the 18th of June 2002, but as the limitation period for this particular incident will expire on or before the 6th of November 2002, the applicant seeks to ensure its right to bring proceedings

in the current uncertain state of the legislation. It does so  
on two grounds:

1. Pursuant to section 18(1)(c) for leave to proceed,  
notwithstanding the non compliance with those notice  
provisions;
2. and further, or alternatively, pursuant to section 43,  
which allows the Court to give leave in circumstances of  
an urgent need to start the proceeding.

I am satisfied that the applicant has satisfied the provisions  
of the section and I grant leave to the applicant to proceed,  
whether or not it has complied with the notice proceedings. I  
do so particularly pursuant to section 43, given the eminent  
expiring of the period of limitation.

I therefore make orders in terms of the draft initialled by me  
and placed with the papers.

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