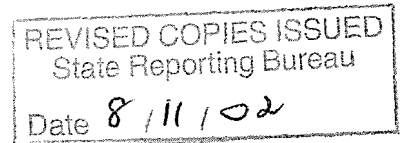




## Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

HELMAN J

No S3110 of 2002

PAUL MERVYN RAYMOND TUCKER

Plaintiff

and

JOHN SYDNEY HAINES

First Defendant

and

SIGNATURE CATAMARANS PTY LTD

Second Defendant

BRISBANE

..DATE 22/10/2002

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 first and second defendants in which the principal relief sought is that orders be made that paragraphs 7, 8, 9, 11 and 14 of the plaintiff's amended statement of claim filed on 2 October 2002 be struck out pursuant to rule 171 of the Uniform Civil Procedure Rules on three bases: first, that those paragraphs disclose no real cause of action; secondly, that they are frivolous and vexatious; and thirdly, that they will delay or prejudice the fair trial of this action.

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A similar order is sought in relation to paragraph 17 of the amended statement of claim.

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HIS HONOUR: The complaint about paragraphs 7, 8, 9, 11 and 14 concerns an allegation that the first defendant represented to the plaintiff that he undertook personal liability under an agreement set out in a written document dated 7 February 2001 in addition to or instead of the second defendant. Relying on those allegations, the plaintiff claims to be entitled to a declaration that the first defendant is estopped from denying personal liability under that agreement and a mortgage debenture, the terms which were agreed upon, according to the plaintiff's pleading, by the plaintiff on the one hand and the first and second defendants on the other subsequently to the making of the agreement of 7 February 2001. It is further alleged that the plaintiff is entitled to damages for breach of contract by the first defendant.

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On behalf of the first defendant, Mr Perry argued that undertaking personal liability for a contract of the kind alleged is not a concept that has any legal foundation. Mr Perry argued that the plaintiff should be required to plead whether it is being alleged that there was a collateral contract between the plaintiff and the first defendant to a contract between the plaintiff and the second defendant, or whether the first defendant undertook personal liability as guarantor of the second defendant's obligations under a contract, or whether by some other means it was alleged that the first defendant was liable under the contract. The estoppel plea, Mr Perry argued, such as it is, cannot be maintained.

On behalf of the plaintiff Mr Geraghty submitted that the plaintiff has adequately pleaded the facts upon which he relies and that it was not necessary for the pleader to go further to put a label on the first defendant's liability. Taking the pleading as a whole, Mr Geraghty conceded as I understood his submissions, that the effect of the statement of claim in its present form is to allege that, in the way pleaded, the first defendant had become a party to the contract in question and that in the circumstances the first defendant is estopped from denying that.

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HIS HONOUR: Having given extensive consideration to this pleading and to the submissions made on it, I am persuaded by Mr Geraghty's argument and consequently I conclude that the allegations against the first defendant are precise enough to enable the first defendant to respond to them. I am not persuaded that it is necessary for the plaintiff to go further than he has already in his allegations against the first defendant.

The second part of the application related to paragraph 17 of the amended statement of claim, in which the terms of the mortgage debenture which was prepared on the instructions of the first defendant are set out.

That paragraph does not appear to me to be such as to warrant the order sought except for this: particulars given of it in paragraph 10 of the plaintiff's further and better particulars do not appear to assist in clarifying the plaintiff's case, although when explained by Mr Geraghty the particulars appeared to be clearer. They were in response to a request made on behalf of the defendant which sought clarification as to how the terms of the mortgage debenture were said to follow from the written agreement of 7 February 2001. Seen in that light I am not persuaded that those particulars, which the defendants also seek to be struck out, should suffer that fate. But it was conceded, I record, by Mr Geraghty that the particulars could be struck out without damage to the plaintiff's case. It will be a matter, I think, for the plaintiff to withdraw the particulars if he sees fit, but I am

not persuaded that it is necessary for me to make an order  
that they be struck out.

I should mention one final matter, and that is that the  
application included an application for an order that  
paragraph 18 of the further and better particulars of the  
further amended statement of claim be struck out. That  
application was ancillary to the application that paragraphs  
7, 8, 9, 11 and 14 be struck out and since I am not persuaded  
that they should be struck out, I am not persuaded that  
paragraph 18 of the further and better particulars should be  
struck out either.

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HIS HONOUR: The application is dismissed. I order that the  
defendants pay to the plaintiff his costs of and incidental to  
the application to be assessed.

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