

[2002] QSC 095

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WILSON J

No S6301 of 2001

AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION

Applicant

and

1st STATE HOME LOANS PTY LTD
ACN 069 399 426

First Respondent

and

ROCCO FERRANTINO

Second Respondent

and

TANYA JANE SCHAFER

Third Respondent

and

AYNAT GOLD NOMINEES PTY LTD
ACN 079 874 132

Fourth Respondent

and

FERNDUNE PTY LTD
ACN 081 685 976

Fifth Respondent

BRISBANE

..DATE 03/04/2002

ORDER

HER HONOUR: Would you stand up, please, Mr Ferrantino.

I have found the second respondent, Rocco Ferrantino, to be in contempt of Court for his breach of paragraph 8 of the order of Justice Mullins made on 25 July 2001 and I have found further that he acted in deliberate defiance of paragraph 8 of that order.

There was a second charge against Mr Ferrantino, that he failed to comply with order number 3 of the same order made by her Honour Justice Mullins, in that he executed a contract of sale of property at 61 Benowa Road, Southport, for and on behalf of the fifth respondent. I dismissed that charge against Mr Ferrantino.

Thus, it falls to consider the appropriate penalty for the contempt which I have found. In this I am bound by the provisions of the Uniform Civil Procedure Rules and I refer in particular to rule 930 subrule 2 which provides:

"If the respondent is an individual the Court may punish the individual by making an order that may be made under the Penalties and Sentences Act 1992."

I refer also to rule 932 which provides:

"The costs of a proceeding for punishment for contempt are within the Court's discretion whether a specific punishment is imposed or not."

The applicant submitted that I ought to impose a fine and make an order for indemnity costs. The second respondent submitted that an indemnity costs order itself would be

sufficient.

I view very seriously the defiance of the Court's authority.

Proceedings such as these have a dual character. As between the parties there is an element of civil execution and as

between the party in default and the State there is a penal

or disciplinary jurisdiction to be exercised by the Court in the public interest. On the material which was before me,

there was no evidence that harm had been caused to third

parties. There was no evidence, for example, of sequestration

of assets.

Mr Ferrantino has today, through his counsel, apologised to

the Court for his conduct. He seemed, nevertheless, through his counsel, to continue to assert that he had not intended

to defy the Court's authority, although he accepted that he

was bound by my finding in that regard.

Mr Ferrantino lives in a de facto relationship with a woman

who is in ill health. There are dependent children in the

household. He is the sole breadwinner.

After careful consideration, I have concluded that in all

the circumstances an order for indemnity costs of and

incidental to the charge that he breached paragraph 8 of

Justice Mullins' order would be an adequate penalty.

However, I am concerned at the potential for delay in the

assessment and payment of those costs and that such delay

may weaken the effect of the Court's order.

Accordingly, I make an order in these terms: I order the

ORDER

second respondent to pay the applicant's costs of and incidental to the charge that he breached paragraph 8 of the order of Justice Mullins made on 25 July 2001 on the indemnity basis, the amount of such costs to be agreed on or before 30th April 2002 and in the absence of agreement to be assessed by the Registrar.

I come then to the second charge against the second respondent - that is, the one which I have dismissed. It was agreed by counsel that the second respondent is entitled to costs but there was a question of the basis on which those costs should be assessed. The applicant submitted they should be assessed on the standard basis only and the second respondent submitted that they should be assessed on the indemnity basis.

I do not regard this charge as coming within the circumstances which would warrant an order for indemnity costs in the usual case. I do not regard the bringing of the charge as an abuse of the process of the Court, nor do I consider that it was brought in circumstances where the applicant always knew or ought always to have known that it could not succeed on that charge. I repeat that with respect to the first charge where I have ordered indemnity costs I did so intending that there be some penal element in the costs order. Thus, I am going to allow the second respondent his costs with respect to the second charge but only on the standard basis.

I order the applicant to pay the second respondent's costs

ORDER

of and incidental to the charge that he breached paragraph 3 of the order of Justice Mullins made on 25 July 2001 on the standard basis, the amount of such costs to be agreed on or before 30th April 2002 and in the absence of agreement to be assessed by the Registrar.

I come then to the position of the fifth respondent. The fifth respondent was charged with having breached paragraph 3 of the order of Justice Mullins. I dismissed that charge. There is a question of whether to order costs with respect to it. The applicant submitted that I ought not to do so; that no further costs had been incurred since the same solicitors and counsel had represented the second and fifth respondents and there had been no separate affidavits. The fifth respondent asked for costs. In circumstances where more than one party is represented by the same lawyers, the dissection of the costs incurred is a matter for the Registrar in his capacity as the taxing officer.

I order the applicant to pay the fifth respondent's costs of and incidental to the charge that it breached paragraph 3 of the order of Justice Mullins made on 25 July 2001 on the standard basis, the amount of such costs to be agreed on or before 30th April 2002 or in the absence of agreement to be assessed by the Registrar.

ORDER