



Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

REVISED COPIES ISSUED
State Reporting Bureau
Date: 30 August, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

McMURDO J

No 1556 of 2001

TRUPPS PTY LTD (ACN 010 958 344) AS Plaintiff
TRUSTEE FOR THE TRUPPS FAMILY TRUST

and

CRUPET HOLDINGS PTY LTD First Defendants
(ACN 003 114 074) AND
MARCO ENTERPRISES PTY LTD
(ACN 080 329 228)

and

EMANUAL TZANNES AND MARCO BERTA Second Defendants

BRISBANE

..DATE 09/08/2004

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 first defendants have not appeared, this being the date for the commencement of the trial. Earlier this morning I gave reasons which explained the circumstances of that non-appearance.

The plaintiff seeks judgment against the first defendants and the plaintiff and defendant added by counterclaim seek to have the first defendants' counterclaim dismissed in each case pursuant to rule 476.

The plaintiff called evidence from Mr and Mrs Trupp by which the matters in issue between the plaintiff and the first defendants according to the pleadings have been established. The plaintiff has tendered a copy, which is an unstamped copy, of the relevant contract. I have received evidence from Mrs Trupp as to the contract having been stamped. That evidence is hearsay, but taken together with the document which is Exhibit 10, which is a copy of an Amended Assessment Notice issued from the Office of State Revenue in February 2001, it is evidence which satisfies me that the original contract has been duly stamped.

The claim is for the balance of moneys payable under a contract for the sale of a business from the plaintiff to the first defendants. The terms of the contract are in substance admitted by the Defence, although there is an issue in relation to the acceleration of the time for payment of instalments to which I shall return. Otherwise, the plaintiffs are put to proof as to the price or prices

ultimately agreed for stock and motor vehicles.

1

I am satisfied from the evidence called this morning that the matters alleged in paragraphs 8, 9, and 10 have been proved.

I am also satisfied of the proof of the matters in paragraph 12, subject to the credits which should be given to the first defendants as volunteered by Mrs Trupp.

10

As to paragraph 16 of the Statement of Claim, I am satisfied that there was an agreement to the effect there alleged with the qualification volunteered by Mr Trupp that the agreed price was \$55,000, the difference being explained by the amount in paragraph 16 being rounded up to include some allowance for GST. The evidence therefore proves an entitlement to the various amounts claimed before consideration is given to interest.

20

30

With the qualifications of the sums conceded by Mr and Mrs Trupp in their evidence, which amounts to a total of \$13,668.99, the result is that regardless of any issue as to the acceleration of the date for payment of instalments there would be before any allowance for interest, either under the contract or otherwise, an entitlement as against the first defendants to the sum of \$251,877.16.

40

50

The contract provides by special condition 3 that if the purchaser shall default in its obligation to pay any of the instalments, that is instalments for purchase price or stock on or before the due dates then "in such event all of the

moneys owing to the vendor as at the date of default will immediately become payable to the vendor without any further notice to the purchaser, and in this regard the vendor will be entitled to take whatever action is necessary to recover the full amount then owing to it".

On the pleadings there was an issue raised as to the proper interpretation of this clause. With the passage of time that issue is relevant only, as I see it, to the calculation of interest. On my interpretation of clause 3, it provides for an acceleration of any amounts the subject of an obligation to pay pursuant to special condition 2(b) or special condition 7(b) so as to bring forward the date on which instalments should be paid to the date of default in payment of any of those instalments. The result is that when there was default made on the 18th of December 2000, as I read clause 3, the whole of the moneys to be paid under this contract then became due and payable.

Accordingly, that becomes a relevant date for calculation of interest. Standard clause 30 of this contract provides that if any moneys due and payable under the contract are not paid on the due date for payment, then "the purchaser should pay interest to the vendor on such unpaid moneys or on that part as should from time to time remain unpaid at the rate of 5 per cent per annum above the rate then ruling for 180 day bank accepted bills by the vendor's bank".

Evidence was led as to the relevant bank rate as at

18 December 2000 but not for any subsequent date. In my view, interest is recoverable under this clause only upon proof of the relevant bank rate from time to time during the period for which interest is claimed. When I indicated that view as a likely one, Mr Eastwood, who appears for the plaintiff, sought leave to claim in the alternative interest under the Supreme Court Act and there is no reason why that leave should not be given.

I therefore intend to allow interest not at the rate according to condition 30 but at the rate of 9 per cent simple calculated from 18 December 2000 until today, which upon the sum of \$251,877.16 is an amount of \$82,615.19.

I am satisfied therefore that the plaintiff has established an entitlement to judgment against the first defendants in the sum totalling \$334,492.35. There will be judgment for the plaintiff against the first defendants in that sum.

The first defendants will be ordered to pay to the plaintiff's costs of and incidental to its claim against them to be assessed on a standard basis.

I am also satisfied that the counterclaim by the first defendants against the plaintiff and the additional defendant to that counterclaim, Mr Trupp, should be dismissed. Accordingly, the counterclaim by the first defendants against the plaintiff and the defendant added by counterclaim is dismissed and the first defendants are ordered to pay to the

plaintiff and the defendant added by counterclaim their costs
of and incidental to that counterclaim to be assessed on a
standard basis.

1

10

20

30

40

50