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[2004] QSC 383

Transcript of Proceedings

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State Reporting Bureau
Date: 1 October, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MACKENZIE J

Claim No 279 of 2003

SPARKLE CAPITAL LTD

Respondent/Plaintiff

and

DISCERNING SMILE PTY LTD
(ACN 096 087 491)

Applicant/First Defendant

and

GRAEME RUSSELL ISON

Applicant/Second Defendant

and

PETER TERRENCE GRAHAM

Applicant/Third Defendant

and

PETER WAYNE FISHER

Third Party

CAIRNS

..DATE 29/09/2004

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 order that I intend to make in regard to this matter is that it be adjourned rather than to make a guillotine order.

Service was effected on the 9th of September 2004. The plaintiff/respondent is a China-based company. I am prepared to assume that it may have been more difficult than usual to get instructions especially as the matter has been brought forward by a couple of days to meet the Court's convenience.

I have been told from the Bar table that in the absence of affidavit material that there are difficulties from the point of view of the respondent/plaintiff in being able to send money from China to Australia for the purpose of providing security and presumably for the payment of costs which have been assessed by the Registrar pursuant to the application for security for costs.

It seems to me that it is incumbent on the plaintiff/respondent to explain what has been done in the period of about 12 months since the order was made with a view to overcoming these problems and the nature of difficulties encountered or anticipated to be encountered.

Without that material the Court can have no confidence that there will ever be a capacity to provide security and the question then becomes a very live one of whether the action should be allowed to linger on the list.

If the matter has merely been left in abeyance and it can be inferred that there was no apparent will to take steps to lift the stay which flowed from non-compliance with the Chief Justice's order the plaintiff/respondent may be in a difficult position to avoid a guillotine order or judgment for want of prosecution in the relatively near future.

That, of course, is not a concluded view because what happens in that regard will depend on the evidence that ultimately emerges and in any event I cannot bind another Judge who may sit on the matter in the unlikely prospect that I will be sitting on it again.

But, nonetheless, it seems to me that the risk should be made plain to the plaintiff by the legal advisors that there is a real risk that if the problems are not overcome promptly that serious consequences may follow.

So, what I propose to do is adjourn the matter to the 19th of October 2004 and reserve the costs of the application.
