



Transcript of Proceedings

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State Reporting Bureau
Date: 6 October, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

HOLMES J

No 6194 of 2004

TRAVERS LUKE BEYNON

Plaintiff

and

AIKMAN STODDART ACCOUNTANTS PTY LTD
ACN 100 347 984

First Defendant

and

CREDITLINK FINANCE PTY LTD
ACN 078 456 354

Second Defendant

and

EWAN ALISTAIR JAMES STODDART

Third Defendant

BRISBANE

..DATE 28/09/2004

JUDGMENT

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HER HONOUR: This is an application for summary judgment.

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The plaintiff paid, it is not contested, an amount of \$387,105.75 to the first defendant company which traded as an accountant. A further \$43,000-odd was paid to the second defendant by way of fees.

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Of the 387,000, some 360,000 was forwarded to an entity called Interactive Brokers for overseas trading. Now that is at the heart of the dispute between the parties. The plaintiff says that the funds were paid to the trust account to be held in a Hong Kong bank account and simply to pay interest.

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The first defendant's defence is put on the basis that there was an agreement that the monies would be invested through a man called Finerty and a company, Interactive Brokers Pty Ltd. Some of the funds were retained in the account of the first defendant - an amount of \$27,080.75 - and it is that amount which is the subject of the application for summary judgment. It does seem to be in a different class from the other funds, because plainly enough, if there were any direction that it be invested, that was not complied with, so it remains as a distinguishable amount.

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As to what has become of it and whether it has been repaid there are different accounts. Certain amounts have been paid back to the plaintiff. In the statement of claim, these are set out as follows:

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\$40,389.07 was paid back on the 10th October 2002 by
Interactive Brokers;

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\$19,045.45 was paid back on the 9th December 2002 again by
Interactive Brokers;

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\$14,000 on the 11th December 2002 by Auspack Finance;

\$43,011.76 on the 13th December 2002 by Creditlink Finance,
which is the second defendant.

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Different accounts have been given by the third defendant of
how all this came about. He was a director of the first
defendant; he describes himself as its principal. He is now
bankrupt and therefore he is not, of course, still a director.

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In an affidavit resisting a notice of statutory demand filed
on the 4th February 2003, he said that amounts including an
amount of \$40,000 paid on the 9th October 2002, presumably the
funds referred to in the statement of claim as having been
received on the 10th October 2002, and a further amount of
\$40,389.07 paid on the 10th December 2002, were refunds of
capital from trades back to the plaintiff. There is no
suggestion in that affidavit that they represented payment of
any amount held by the first defendant.

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In an affidavit of 30th August 2004, the third defendant said
that the \$27,000 was repaid as part of the repayment of the
amount of \$43,000-odd on the 13th December by Creditlink.

That seems not to have been the case and it seems now conceded that that is so. Creditlink was by that payment refunding the fees I have already mentioned, paid direct to it.

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In an affidavit of the 1st September 2004, the third defendant said that the amount of \$27,080.75 was actually retained by the first defendant as fees, although no account had been rendered and those funds had been spent. There is not any allusion to any authority to draw them from the trust account or any documentation at all; and the notion of the sum being fees does not seem presently to be persisted with. It seems to be tacitly accepted that the funds are repayable to the plaintiff but it is said those funds have been repaid; the \$40,389 paid by Interactive on the 10th October 2002 includes that amount.

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Now the way that that comes about, it is said, is that those funds were due to Auspac Finance, which had, like the plaintiff, invested with Interactive Brokers; that the third defendant, as the Australian manager of Auspac, authorised Interactive to pay funds due to Auspac direct to the plaintiff; so that Auspac then took an acknowledgment of debt from the first defendant in the amount of the \$27,080 incorporated in \$40,389.07 paid by the plaintiff.

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It is unexplained what the capacity in which the balance of some \$12,700 which presumably also was payable to Auspac was then paid to the plaintiff, or why Auspac should have been a party to that.

The whole thing, given the variations in account by the third defendant, stretches credulity, I have to say, but it is the case that there was at least one other payment made by Auspac to the plaintiff and there does seem to be some basis for supposing it was a vehicle for the third defendant and possibly the first defendant to refund monies to the plaintiff.

There might therefore be an arguable case, but as I say, it is not a very easy one to accept. But given that an assessment of the claims of the third defendant and hence of the first defendant, which is the only viable defendant, really entails credit issues of that sort, I do not think it is a matter as to which, at this stage, one can say there is no need for a trial of the claim.

In those circumstances, I think that the application for summary judgment ought not to be granted at this time at any rate, but that a condition that the funds be paid into Court should be imposed so that no defence to that part of the claim can proceed without the monies being paid in. That is because of what I regard as the apparently dubious nature of the defence at this stage. That may prove to be quite unfounded, but certainly that is the impression that it leaves one with.

Consequently an order will be made to that effect once the terms of it are settled by counsel.

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HER HONOUR: I will order that the costs of the application be costs in the proceeding.
