



Transcript of Proceedings

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State Reporting Bureau
Date: 10 November, 2005

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 67 of 2002

CMC CAIRNS PTY LTD

Plaintiff

and

TIM MACROSSAN

Applicant/First
Defendant

and

PAULA LENNON

Applicant/Second
Defendant

CAIRNS

..DATE 07/11/2005

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: When the matter came on for hearing, Mr Ryall of
counsel on behalf of the first and second defendants, sought
leave to read and to file an affidavit of Robert James Grealy,
which was sworn on 4 November 2005 and served on that same
date. That affidavit, I am informed, goes to the issue of
prejudice suffered by the first and second defendants.

The reading of the affidavit is opposed by the plaintiffs on
the basis that they have not been given an opportunity to
respond to the allegations and that its late delivery comes
against a specific request by the plaintiff that the
defendants give the plaintiffs notice of any matters which
they say would give rise to an allegation of prejudice in
these proceedings.

During the course of argument I have been informed that direct
prejudice has not been made out, but simply there has been a
reference to documents which were not able to be found by the
defendant's solicitor in the short time in which they made a
search. There may be an opportunity for the documents to be
found or for copies of them to be produced, but time has not
permitted that to be done. So, prejudice on that basis
remains rather as a chance, and not as something on which a
proper allegation is founded.

In the affidavit I am told that there is also an assertion
that some witnesses may not be available, but it seems that
inquiries relating to the whereabouts of those witnesses are
not yet complete either.

With the potential value of that affidavit being left in that uncertain basis and coming as it does shortly before the hearing with no opportunity for the plaintiffs to assert to the contrary, the better course is to uphold the objection to the reading of the affidavit and direct that the affidavit will not be received on the hearing, if the hearing is to proceed today.

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