



Transcript of Proceedings

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State Reporting Bureau
Date: 29 November, 2005

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

HELMAN J

No 533 of 2003

MITCHELL CONTRACTORS PTY LTD
(ABN 95 087 699 244)

Plaintiff

and

TOWNSVILLE THURINGOWA WATER SUPPLY
JOINT BOARD TRADING AS NQ WATER
(ABN 34 325 540 506)

Defendant

BRISBANE

..DATE 15/11/2005

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: This is an application by the defendant for orders that the plaintiffs provide further particulars of allegations in specified paragraphs of their further amended statement of claim filed on the 5th July 2005, or alternatively, that those paragraphs be struck out, for such further order as the court deems meet, and for an order that the plaintiffs pay the defendant's costs of and incidental to the application.

In the events that have happened since the application was filed on the 24th October last, the defendant concedes that the application should be dismissed but seeks an order that the plaintiffs pay its costs. That application for costs is strenuously resisted on behalf of the plaintiffs, the allegation being made that the defendant's application was unnecessary and likely to delay the progress of the proceeding.

It is necessary that I give some details of the history of the application. Letters seeking particulars were sent by the solicitors for the defendant to the solicitors for the plaintiffs on 21st September 2005 to which a response dated 5th October 2005 was made, and then a further letter was sent requesting particulars on the 12th October 2005. That letter sought a reply by 17th October 2005 and no reply was forthcoming. On 14th October 2005 McMurdo J. ordered that the defendant make any application to strike out any part of the plaintiffs' amended statement of claim so as to be heard by 11th November 2005. A further order was made that the time

for filing an amended defence be extended until the 18th
November 2005. That order, then, imposed a timetable that
required the provision of the particulars sought in the
requests made in September and October 2005 urgently. As I
mentioned there had been no response to the letter of 12th
October 2005 by the deadline, so the defendant proceeded to
file this application on the 24th October 2005. The
application was returnable on 2nd November 2005, but on that
day it was adjourned by consent to today and the plaintiffs
were ordered by consent to file and serve a second further
amended statement of claim by 4th November 2005.

That second further amended statement of claim was in fact
filed on the 9th of November 2005 but no point is made before
me about the delay in filing that document. The second
further amended statement of claim responds to the defendant's
solicitors' requests for particulars by incorporating them in
that pleading.

I mentioned that there had been no response to the letter of
the 12th of October 2005 by the deadline. On the 3rd of
November 2005 there was a response by way of letter from the
solicitors for the plaintiffs but there is in that letter no
allegation of impropriety in seeking the particulars subject
to this application.

In the result the facts may be summarized, I think, as
follows. There was a request for particulars. It was not
asserted - as I understand it, prior to today - that there was

any impropriety in the request for particulars. The
particulars were supplied and incorporated in the second
further amended statement of claim. There was some urgency
about this matter as I have explained. In the result the
application has been met by the provision of the particulars
sought and to that extent has been rendered unnecessary.

Had the particulars been supplied by the deadline mentioned in
the letter of the 12th of October 2005 this application would
not have been necessary. It was necessary, as I have
explained, because of the urgency brought about in particular
by McMurdo J's order of the 14th of October 2005.

I am not persuaded that the plaintiffs have made out a case
for depriving the defendant of its costs of the application.
It was suggested on behalf of the plaintiffs that there be no
order as to costs or that costs be reserved or that costs be
ordered to be costs in the cause. I see no reason to make any
of those orders.

I think in the circumstances the defendant is entitled to its
costs of the application, and in consequence I shall make the
order as in the draft presented to me on behalf of the
defendant. The orders will be that the application is
dismissed and that the plaintiffs pay the defendant's costs of
and incidental to the application to be assessed on the
standard basis.
