

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 9420 of 2006

COUSINS SECURITIES PTY LTD
ABN 97 080 152 914

Respondent (Plaintiff)

and

JENNIFER GAY BELL

Applicant (Defendant)

AND BY COUNTERCLAIM

JENNIFER GAY BELL (IN HER OWN
CAPACITY AND AS EXECUTRIX AND TRUSTEE
OF THE ESTATE OF THE LATE GARY JAMES
BELL)

Plaintiff by
Counterclaim

and

COUSINS SECURITIES PTY LTD
ABN 97 080 152 914

Defendant by
Counterclaim

CAIRNS

..DATE 17/08/2007

JUDGMENT

HIS HONOUR: In this matter the defendant has sought further and better disclosure of financial documents of the plaintiff relevant to the plaintiff's capacity to be in a position to settle the transaction.

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There was available to the defendant a letter from the plaintiff's financier indicating that finance was available to the plaintiff at the time the action was instituted. The plaintiff was not satisfied with that letter and sought quite wide disclosure of the plaintiff's financial dealings.

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Presumably, this was in order for the defendant to make its own assessment of this issue of financial capacity at the time of the institution of the proceedings, and perhaps leading to a determination of that capacity when the matter is finally determined.

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My order in this matter has been arrived at after argument before me in which I indicated that I regarded the defendant applicant's application for disclosure to be too wide, and it was seeking the records of the conduct of the plaintiff, and it was not entitled to that.

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As a consequence of my intimation, the parties have agreed on a form of an order which, for present purposes, limits the disclosure to the documents upon which the financier was prepared to advance sufficient moneys to the plaintiff to complete the transaction.

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The disclosure of those specific documents may or may not satisfy the ongoing obligation of the plaintiff to disclose relevant documents, but it at least makes a start. It may well, on the other hand, be sufficient for all purposes.

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That point having been reached, the parties now argue over the costs of the application. Prima facie, the plaintiff has been successful but only to a limited extent, and to an extent which probably would not have been possible except in the circumstances of an argument raised before me.

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The defendant, however, contends that had the plaintiff made objection to the letter demanding disclosure, the discussion could have happened beforehand, and may have avoided the institution of this application proceeding.

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The defendant opposes the order for costs on the basis that had it been given the opportunity to discuss the scope of the disclosure, agreement may have been reached without the necessity of the application. In all the circumstances, it is clear that the scope of the defendant's application was far too wide, and the defendant appropriately resisted it.

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I do not believe that, with the current attitude between the defendants, that agreement would have been reached as to the nature of the disclosure, but at least the defendant ought to have had the opportunity to do so before the application was instituted.

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The defendant did indicate that it was opposing the application based on the breadth of the scope of disclosure sought, and that no further follow-up was made to see if agreement could be reached on a reduced scope.

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In those circumstances it seems to me that no order for costs should be made to either party. My order will be simply that there is no order as to costs. I will achieve that by simply deleting paragraph 3.

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MR JONSSON: Thank you, your Honour.

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HIS HONOUR: And I will make orders in terms of the amended draft, initialled by me and placed with the papers.

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