

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

No 6598 of 2009

BELLA MILEWSKI-ZAYAT

Applicant

and

SPACERACK PTY LTD

Respondent

BRISBANE

..DATE 28/10/2009

ORDER

HER HONOUR: The fourth respondent has filed an application seeking various orders with regard to injunctions granted against it in this Court.

The first paragraph of the application seeks an order that the injunction granted in the matter dated 8 July 2009 as extended by the subsequent order dated 28 July 2009, be discharged as against the fourth respondent. The order sought with regard to the injunction has been narrowed by Mr Peden, who appears on behalf of the fourth respondent.

An injunction was granted against the first two fourth respondents on 8 July 2009. That injunction has expired by effluxion of time. Precisely when it expired is a matter of some contention.

On 24 July 2009 it was extended by order of another Judge of this Court to 28 July 2009 at 4 p.m. It appears that it did expire at that time and on that date a new injunction, albeit in the same terms, was issued against the respondents by another Judge of this Court.

The fourth respondent applies to have that injunction, that is the injunction granted on 28 July 2009, set aside *ex debito justitiae* because the fourth respondent was not represented or served with the application for that injunction.

The matter is complex and even somewhat bizarre. It appears that on 8 July 2009 the injunction was initially just sought against the first respondent, and then the two principals of

the first respondent who are the second and third respondent.  
When it became clear that those respondents had no right to  
evict the applicant from the premises of which the plaintiff  
is in fact, if not in law, an occupier, the fourth respondent  
who is the registered lessee of those premises was added.

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For the sake of these proceedings only, I accept that the  
solicitors acting for the first to third respondents were told  
by the second respondent that he could give them instructions  
to act on behalf of the fourth respondent, and they purported  
to do so. An injunction was therefore granted against all  
respondents who were apparently all represented.

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The solicitors acting for the first to third respondents came  
to realise that the second respondent had no authority to give  
them instructions to act on behalf of the fourth respondent,  
and intended to inform the Court of that on the return date,  
but for reasons that do not need to concern me here did not so  
inform the Judge on 24 July 2009.

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However it was apparent on 28 July 2009 that the fourth  
respondent did not appear and was not represented. The second  
and third respondents who appeared in person, and the second  
respondent who appeared for the corporate first respondent,  
took no steps to inform the Judge hearing the application that  
the fourth respondent was not present because it never had  
been properly served with the application, and in spite of the  
fact that the second respondent had given instructions to his  
solicitor on the previous occasion that they could, on his

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instructions, act for the fourth respondent, that was to his knowledge not true.

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The applicant is not legally represented and not sophisticated in presenting legal argument, although capable of expressing strongly her views about the facts and the difficult situation that she has found herself in dealing with the first respondent and its principals who purported to have the right to sub-lease the property, which they did not.

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The fourth respondent is, on these facts, entitled to have the injunction against it discharged. There is a further matter which is relevant to the question of the injunction against the fourth respondent. The applicant on her own admission to me yesterday, has not paid any rent for the premises for the past three months. She has not offered to pay that money in any way whether into Court or on trust. Yesterday I granted her the indulgence to have until today to show that she was capable of doing that although it appeared apparent that she was not going to be capable of doing that. But today she has not appeared in Court. A telephone message has been received at one minute past 10 in the registry from her husband saying that she is in hospital but there is no evidence that that is true, and in any event, that does not deal with the question of securing rent in premises in which she is purporting to occupy as a tenant. A tenant is obliged to pay rent and the fourth respondent is the registered lessee of those premises and the applicant has not offered to pay rent to any person, or as I said, to secure it.

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On that basis as well the fourth respondent is entitled to have the injunction against it discharged so that it can give the applicant notice to quit the premises.

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The applicant has also sought payments pursuant to the undertaking as to damages given by the applicant, but that is a rather complex question given the number of facts which cannot be determined in a summary way, which include the roles of particularly the second and third respondents in causing the loss, the nature of the relationship, if any, between the first, second and third respondents and the fourth respondent, the question of why the assignment of lease from the fourth respondent to the first respondent was never registered, and the actions of the first, second and third respondents in causing detriment to the business of the applicant if that is true.

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Accordingly the only orders that I will make are that the injunction issued by this Court on 28 July 2009 is discharged against the fourth respondent.

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HER HONOUR: I order that the applicant deliver vacant possession of the premises located at 51 Bunya Street, Eagle Farm to the fourth respondent within 14 days. I order that the applicant pay the fourth respondent's costs limit of the application to discharge the injunction limited to one day.

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