

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

No 6964 of 2006

PINNACLE HOMES (SALES) PTY LTD

Applicant

and

DIXON SYSTEMS PTY LTD

Respondent

BRISBANE

..DATE 04/11/2009

ORDER

HER HONOUR: The applicant for reactivation of this matter is the defendant who is also a plaintiff by counter-claim.

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This matter came within the case flow management system because the claim was filed on 18 August 2006, but no request for a trial date was filed within 180 days of the filing of the defence, which is considered by the Court to be the time ordinarily required for parties who are acting expeditiously to have their matter ready for trial.

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The matter came before me on 27 March 2009 for directions. Orders were made by consent on that date, which included orders with regard to disclosure, further pleadings, an expert's report, and a date by which the request for trial date must be filed, that is, by 19 June 2009, or the matter would be deemed resolved.

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It is clear from the affidavit of Taylor David Griffin filed on 2 November 2009, that the defendant's solicitors took seriously their obligation to litigate this matter expeditiously, and attended to the matter with diligence.

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However, as is often the case, the provision of an expert report provided a stumbling block. This seemed to be related to lack of adequate disclosure by the second plaintiff, being the first defendant by a counter-claim, and the time for the defendant complying with its orders got away from it.

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The plaintiff complied on time with the second direction made by me with regard to its amended reply and answer, and

complied with the requirement to deliver copies of documents,
albeit late, in accordance with the first direction made by
me. However, paragraph 4 of the order made on 27 March, 2009,
required further disclosure which did not occur.

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In any event, the expert retained by the defendant drew
attention to further disclosure that was required, which
disclosure did not take place.

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In spite of the defendant's diligent attempts to have the
matter proceed and get into a shape where it was ready for
trial, the matter was not ready for trial on 19 June 2009,
when the parties were required to file a request for a trial
date or the matter be deemed resolved.

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The plaintiff it appears was content to allow the matter to be
deemed resolved, and the defendants did not realise the
significance of the matter being deemed resolved, being of the
view, incorrectly, that it was merely a formal matter to have
the matter reactivated.

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Acting on that incorrect belief, the defendant continued to
prepare the matter and finally realised that the matter would
have to be reactivated before they could seek the orders that
they have now sought in their application.

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The material before me satisfies me that the matter should be
reactivated. The defendant has litigated this matter
diligently and with expedition, and has an unsatisfied

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counter-claim, as well as, having incurred a great deal of costs on defending a claim which now appears to have been abandoned.

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A full explanation has been given for the failure to comply with the directions. There is no potential prejudice in terms of ensuring a fair trial. There would be potential prejudice to the plaintiffs if I were to make the further orders sought in the application today because the plaintiffs would not be aware that the application for reactivation has been successful. That is why I intend today to only make the order that the matter be reactivated, and adjourn the consideration of the other orders sought in the application, for a brief period, to allow the plaintiffs to be served with the further affidavit of Mr Griffin read today, any further material on which the defendants may wish to rely, and to consider their position, now that the matter has been reactivated.

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This litigation has been in progress for some time, and should have been close to being resolved. The defendant has sufficient prospects of success in the other orders which it seeks, and should be allowed the opportunity to have those orders considered once the matter is reactivated.

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In those circumstances, the order that I make is that the matter be reactivated, and that the application be otherwise adjourned to a date to be fixed in the applications jurisdiction.

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