

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

P MCMURDO J

No 3506 of 2007

NU-LOG PTY LTD (ACN 001 420 515)

Plaintiff

and

SONYA COGHLAN

First Defendant

and

THE TRUSTEE OF THE PROPERTY OF  
SONYA COGHLAN, A BANKRUPT

Second Defendant

BRISBANE

..DATE 27/11/2009

JUDGMENT

HIS HONOUR: This is the trial of the plaintiff's proceedings  
against the first defendant and the second defendant who is  
her trustee in bankruptcy.

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When the case was called for trial this morning there was no  
appearance by or on behalf of either defendant. I am  
satisfied that each defendant has had adequate notice of this  
being the date for trial.

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The plaintiff's claim concerns some items used in a boat  
manufacturing business. For the most part the items are boat  
moulds. The plaintiff's case is that it is entitled to  
recover these items from the first defendant because the  
plaintiff is in all respects the true owner of them. The  
items are held pursuant to an order of the Court at certain  
premises.

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The plaintiff must prove that it is the true owner. The plaintiff's case is that it became the owner having purchased them from a company in liquidation under a deed of agreement dated 28 November 2006. The company was then called TIY Manufacturing Pty Ltd (in liquidation). The fact of that deed of agreement is admitted on the pleadings. In any event, the deed is proved by the tender of a copy.

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There is no issue raised on the pleadings as to the effect or purported effect of this deed, save for the pleaded case by the first defendant that at all times from 30 April 2001 she has been the true owner of these items. That last statement may require some qualification because, upon her case, some of the items were not in existence on 30 April 2001, but they were manufactured by the company, which entered into the deed in 2006, at some time in the course of its operations in 2001. But overall her case is that she purchased these items from that company in 2001 and that, therefore, the deed of agreement under which there was a purported assignment of the ownership of the items by the company to the plaintiff was ineffective.

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The position then is that the issue for determination is that raised by the first defendant's defence; that is, whether she, at some stage, became the owner of these items. On her own admission, both within her pleadings and within other documents, and, in particular, an outline of submissions filed in this Court in November 2008, the company had been the owner

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of these items. Further, as her case has admitted, they have at all times remained in the possession of the company.

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So, absent proof that the company did sell the items to the first defendant, the plaintiff has proved that the company was the owner of the items when the deed of agreement was made between the company through its liquidators and the plaintiff in 2006.

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The issue raised by the defence as to the alleged purchase by the first defendant of the items in 2001 is, in all respects, a defendant's issue; that is to say, it is an issue upon which, it seems to me, she bears the onus of proof. The plaintiff was not, in any respect, of course, involved in what she has pleaded to have been the events of 2001. The first defendant has not appeared at this trial and she has not otherwise attempted to tender evidence in support of her pleaded case.

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Accordingly, I must consider the evidence as presented by the plaintiff. That would include the admissions made by her within her pleading and admissions contained within the outline of argument, to which I have referred.

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I am satisfied that more probably than not the company was the owner of these items when, by its liquidators, it entered into the deed of agreement in 2006 with the plaintiff. As I have said, the evidence, including those admissions, establishes that the plaintiff was the manufacturer of at least most of

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these items and that at least until April of 2001 it was the owner of them. Coupled with the fact that the items remained in its possession and that they were items to be used in the conduct of the company's boat building business, the inference should be drawn that the company continued to own the items. Once that inference is drawn, and having regard to the unambiguous terms of the deed, which is admitted as well as proved, the plaintiff has proved its entitlement to the items.

The plaintiff has thereby established that it is entitled to a judgment in the terms which it seeks. It will be declared that the plaintiff is the true owner of the chattels referred to in paragraphs 1 and 2 of the amended claim filed on 18 April 2008, and, more particularly, described in the schedule to the form of judgment which I will sign and place with the file. That will be the form of the declaration.

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HIS HONOUR: It will be further ordered that the first defendant forthwith deliver up the chattels, the subject of that declaration, to the plaintiff.

The plaintiff seeks a further order that it be discharged from its undertaking as to damages given on 28 March 2008. Such an order may be unnecessary, but there will be an order in those terms.

So, in the draft judgment, I've crossed through in the

declaration the words "having purchased the chattels from",  
et cetera.

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MR RUSSELL: Yes.

HIS HONOUR: Now, that leaves the question of costs. The  
plaintiff should have the costs of and incidental to the  
proceedings including the reserved costs from the first  
defendant and I'd hear any further submission you wish to make  
about whether they should be indemnity costs.

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HIS HONOUR: I reserve the question of the scale of the costs.

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HIS HONOUR: I reserve the question of what order for costs  
should be made in the proceedings and the Court will adjourn.

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