

SUPREME COURT OF QUEENSLAND

CITATION: *Bli Bli #1 Pty Ltd v Kimlin Investments Pty Ltd as Trustee for the Kimlin Family Trust* [2010] QSC 381

PARTIES: **BLI BLI #1 PTY LTD ACN 113 906 291**
(First plaintiff/applicant)

and

BLI BLI #2 PTY LTD ACN 114 650 494
(Second plaintiff/applicant)

v

**KIMLIN INVESTMENTS PTY LTD ACN 105 972 825
AS TRUSTEE FOR THE KIMLIN FAMILY TRUST**
(First defendant)

and

**PUGS PTY LTD ACN 081 709 855 AS TRUSTEE FOR
THE BRETT COOK FAMILY TRUST**
(Second defendant)

and

**ROSS COOK AND BRETT COOK PTY LTD ACN 119
223 317 AS TRUSTEE FOR THE ROSS COOK AND
BRETT COOK UNIT TRUST**
(Third defendant)

and

ROSS KINGSTON COOK
(Fourth defendant)

and

BRETT KINGSTON COOK
(Fifth defendant)

FILE NO: BS 5077 of 2007

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING
COURT: Supreme Court at Brisbane

DELIVERED ON: 7 October 2010

DELIVERED AT: Brisbane

HEARING DATE: Application on the papers

JUDGE: McMurdo J

ORDER: **1. The application is dismissed.**
2. There be no order for costs in respect of this application.

CATCHWORDS: PROCEDURE – DISCOVERY AND INTERROGATORIES – INTERROGATORIES – WHO MAY BE INTERROGATED – where the person to be interrogated is not a party to the proceeding and has not been served with this application – whether the court should exercise its auxiliary equitable jurisdiction to grant leave to serve interrogatories on the non-party.

Norwich Pharmacal Co & Ors v Customs and Excise Commissioners [1974] AC 133
Re Pyne [1997] 1 Qd R 326

SOLICITORS: Tucker & Cowen for the applicants

- [1] The applicants have applied for an order that they be granted leave to serve interrogatories. It is not an application made under r 229 of the UCPR because the person to be interrogated is not the defendant or otherwise a party to the proceeding. He is Mr B C Rubin who features in an oral agreement alleged by the applicants in paragraph 10 of the statement of claim. That is not an agreement to which the applicants were parties. In effect, the applicants wish to interrogate him to find out more about the oral agreement which they have alleged.
- [2] Recognising that r 229 does not apply, the applicants refer to *Re Pyne*¹ from which they argue that there is a power to order the provision of information by a non-party. However, the jurisdiction invoked in that case was identified as the Court's auxiliary equitable jurisdiction as explained by Lord Reid in *Norwich Pharmacal Co v Customs and Excise Commissioners*.² It arises in circumstances where a person, wittingly or otherwise, has become mixed up in the tortious acts of others so as to facilitate their wrongdoing. It is said that such a person has a duty to assist the person who has been wronged by providing him with full information disclosing the identity of the wrongdoers. That is not the present case. The jurisdiction relied upon does not exist here.
- [3] In any case, this application was made on the papers without its being served upon Mr Rubin, as it ought to have been. The person against whom orders were sought in *Re Pyne* was served and was heard upon the application.
- [4] The application is dismissed and it will be ordered that there be no order for costs in respect of this application.

¹ [1997] 1 Qd R 326.

² [1974] AC 133 at 175.