

SUPREME COURT OF QUEENSLAND

CITATION: *Nortask Pty Ltd v Areva Solar KCP Pty Ltd* [2015] QSC 339

PARTIES: **NORTASK PTY LTD (ACN 149 114 134)**
(applicant)
v
AREVA SOLAR KCP PTY LTD (ACN 077 690 852)
(respondent)

FILE NO/S: SC No 1564 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 11 November 2015

DELIVERED AT: Brisbane

HEARING DATE: 11 November 2015

JUDGE: Atkinson J

- ORDERS:
- 1. That the plaintiff be restrained, pursuant to section 7 and section 10 of the *Civil Proceedings Act 2011 (Qld)* and rule 658 of the *Uniform Civil Procedure Rules 1999 (Qld)* and the court's inherent jurisdiction, from interfering with the defendant or the defendant's servants or agents and the carrying out of the site conditions, including by preventing or refusing a security guard employed by the defendant from having access to the property which is referred to in the order made by Justice Dalton on 22 September 2015 between 4.30 pm and 7.30 am, Monday to Friday, and from 4.30 pm on Friday until 7.30 am on Monday, and by imposing any further obligations on the defendant, or the defendant's servants or agents, or a security guard employed by the defendant in relation to access to that property.**
 - 2. That the plaintiff pay the defendant's costs of and incidental to this application, to be assessed.**

CATCHWORDS: *Civil Proceedings Act 2011 (Qld)* s 7, s 10

Uniform Civil Procedure Rules 1999 (Qld) r 658

EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INJUNCTIONS FOR PARTICULAR PURPOSES – IN AID OF A LEGAL RIGHT – where the applicant defendant stored certain chattels on land of which the respondent plaintiff is a lessee with the right of exclusive possession – where the plaintiff had previously sought a mandatory injunction requiring the defendant to remove its chattels from the land – where an order was made under which the parties, by their counsel, entered into certain undertakings for the removal of the chattels from the land – where the defendant commenced removing its chattels from the land – where a dispute arose as to the interpretation of one of the clauses of the undertakings – where that dispute was resolved by judicial determination – where the parties remained at an impasse in respect of the removal of the chattels – where the respondent plaintiff asserted that it had behaved reasonably in seeking to impose further conditions on which the defendant should be allowed to access the land, contrary to the undertakings – where it was alleged that one of the proprietors of the land had also sought to impose further conditions – whether the respondent plaintiff ought to be restrained from interfering with the applicant defendant’s compliance with certain terms of its undertakings

COUNSEL: M Steele for the applicant
BJ Gouldson (sol) for the respondent

SOLICITORS: Norton Rose Fulbright for the applicant
Clifford Gouldson Lawyers for the respondent

- [1] **ATKINSON J:** The parties to this application have been in dispute for some long period of time about solar equipment, apparently belonging to the defendant, which has been stored on the property of which the plaintiff is a lessee with the right to exclusive possession.
- [2] That the plaintiff is an occupier in exclusive possession appears from the affidavit of Hermes Speziali filed on 4 September 2015. He swears that he is the managing director of the plaintiff and authorised to swear the affidavit on its behalf. He swears that he and his wife, Janette Speziali, are the registered proprietors of the property and that he is authorised to make the affidavit on behalf of himself and his wife. He swears that since in or about early 2009, the proprietors, as lessors, have leased the land to the plaintiff as lessee and the plaintiff has been, since 2009 and as at the date of the affidavit – and it appears still to be the case – the occupier in exclusive possession of the land.
- [3] On 13 February 2015, the plaintiff brought an application for an injunction requiring the defendant by its servants or agents to cause certain chattels, namely, solar reflectors and other related materials, to be removed from the property. I note that the application was not brought by the registered proprietors but by the plaintiff, whom the registered proprietors swore was in exclusive possession of the land and had that right pursuant to a

lease. On 22 September 2015, the matter appeared to have been resolved by an order made by Justice Dalton. The order is recorded as follows:

Upon the parties, by their counsel, giving undertakings in the terms annexed to these orders, the Defendant is released from its undertakings dated 1 June 2015.

- [4] The parties had liberty to apply and costs were reserved. The annexure to that order set out in detail undertakings given by the defendant and undertakings given by the plaintiff. Also annexed were conditions for the removal process in order that there should be no continuing dispute between the parties. There are some 63 conditions to which the parties agreed as part of the undertakings given to the court. Undertakings have the same effect as injunctions, and non-compliance with undertakings can and will be punished as contempt of court. The punishment may include imprisonment.
- [5] Paragraph 2 of the undertakings given by the plaintiff was, that unless agreed in writing between the parties or otherwise ordered by the court, it would not seek to impose any further conditions or obligations on the access to the property to be provided to the defendant, or the defendant's servants or agents, for the purpose of removal of the chattels other than those conditions referred to in annexure B.
- [6] The defendant began to remove the chattels from the property. A dispute then arose as to the interpretation of clause 58 of the annexed conditions. It provided as follows:

Security be provided by Nortask at its own cost with all keys to site controlled by Nortask, noting Nortask personnel on site 24 hours a day. Areva, at its cost, to employ a security guard at times when Areva is not on site.

- [7] In order to understand that clause, one must understand that the previous clause, clause 57, provided that site access times for Areva were to be 7.30 am to 4.30 pm Monday to Friday, excluding public holidays. In other words, the agreement between the parties provided for Areva to employ a security guard at times when Areva was not on site and that that was to be at its own cost.
- [8] It appears that the plaintiff refused to allow the defendant's security guard access to the site in accordance with clause 58 and the defendant applied to the Court for orders relating to the construction of clause 58. The matter was heard by Justice Jackson, who declared on 20 October 2015 that the provision in clause 58 of annexure B to the order of Justice Dalton made on 22 September 2015 that Areva, at its cost, employ a security guard at times when Areva is not on site, properly construed, referred to a security guard on the site where the chattels were located.
- [9] Notwithstanding that declaration and the undertakings previously given, the parties have not been able to agree on arrangements which would allow Areva to employ a security guard on the site where the chattels are located. I should note and underline the undertaking given by the plaintiff that it would not impose any further conditions upon the defendant. In the present situation, where the defendant has not been able to have the access to the site which is necessary for it to give effect to the right it has under clause 58 of the conditions, it brought an application to the court seeking various orders in the alternative.

- [10] At the commencement of the hearing, I indicated to the parties that I wished to hear submissions on what was sought in paragraph 2 of the application; that is, that the plaintiff be restrained, pursuant to section 7 and section 10 of the *Civil Proceedings Act 2011 (Qld)* and rule 658 of the *Uniform Civil Procedure Rules 1999 (Qld)* and the court's inherent jurisdiction, from interfering with the defendant or the defendant's servants or agents in carrying out the site conditions, including by preventing or refusing a security guard employed by the defendant from having access to the property between 4.30 pm and 7.30 am, Monday to Friday, and from 4.30 pm on Friday until 7.30 am on Monday, and by imposing any further obligations on the defendant, or the defendant's servants or agents, or a security guard employed by the defendant in relation to access to the property.
- [11] In his robust submissions and in an attempt to persuade the court that such an order, which essentially is only aimed to assist in making clear that the undertaking must be complied with, the plaintiff raised many arguments. The first appeared to be that it had behaved reasonably in imposing or seeking to impose conditions on which the defendant should be allowed the access to which it had agreed and which was given effect by an order of the court in which the plaintiff gave undertakings. The fact is that it must comply with the undertaking it gave. Whether or not it has, in its mind, acted reasonably in trying to impose further conditions is of no moment.
- [12] The second argument raised was that notwithstanding that it acts for the plaintiff and that the plaintiff filed an affidavit by Mr Speziali saying that he was able to file that affidavit because he was authorised to swear it on behalf of the plaintiff and that he swore it on behalf of himself and his wife, nevertheless, Mrs Speziali was able to impose further – and clearly some unreasonable – conditions on the access to the site which is necessary for the parties to comply with the court order. I see no basis upon which she can do so, but she is not a party before me. However, any person seeking to interfere with an order made by the court would have to consider their position most carefully. She is not a party before me, so I am not going to make orders against her in this instance.
- [13] I am satisfied that I ought to make the order that the plaintiff be restrained, pursuant to section 7 and section 10 of the *Civil Proceedings Act 2011 (Qld)* and rule 658 of the *Uniform Civil Procedure Rules 1999 (Qld)* and the court's inherent jurisdiction, from interfering with the defendant or the defendant's servants or agents and the carrying out of the site conditions, including by preventing or refusing a security guard employed by the defendant from having access to the property which is referred to in the order made by Justice Dalton on 22 September 2015 between 4.30 pm and 7.30 am, Monday to Friday, and from 4.30 pm on Friday until 7.30 am on Monday, and by imposing any further obligations on the defendant, or the defendant's servants or agents, or a security guard employed by the defendant in relation to access to that property.
- [14] I order that the plaintiff pay the defendant's costs of and incidental to this application, to be assessed.