[2018] QSC 178

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BOND J

SC No 6593 of 2017

STEPHEN JAMES PARBERY AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQ) ACN 009 842 068	**First Plaintiffs**
QUEENSLAND NICKEL PTY LTD (IN LIQ) ACN 009 842 068	**Second Plaintiff**
JOHN RICHARD PARK, KELLY-ANNE LAVINA TRENFIELD & QUENTIN JAMES OLDE AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION) ACN 009 842 068	**Third Plaintiffs**
QNI METALS PTY LTD ACN 066 656 175	**First Defendant**
QNI RESOURCES PTY LTD ACN 054 117 921	**Second Defendant**
QUEENSLAND NICKEL SALES PTY LTD ACN 009 872 566	**Third Defendant**
CLIVE FREDERICK PALMER	**Fourth Defendant**
CLIVE THEODORE MENSINK	**Fifth Defendant**
IAN MAURICE FERGUSON	**Sixth Defendant**
MINERALOGY PTY LTD ACN 010 582 680	**Seventh Defendant**
PALMER LEISURE AUSTRALIA PTY LTD ACN 152 386 617	**Eighth Defendant**
PALMER LEISURE COOLUM PTY LTD ACN 146 828 122	**Ninth Defendant**

FAIRWAY COAL PTY LTD **ACN 127 220 642**	**Tenth Defendant**
CART PROVIDER PTY LTD **ACN 119 455 837**	**Eleventh Defendant**
COEUR DE LION INVESTMENTS PTY LTD **ACN 006 334 872**	**Twelfth Defendant**
COEUR DE LION HOLDINGS PTY LTD **ACN 003 209 934**	**Thirteenth Defendant**
CLOSERIDGE PTY LTD **ACN 010 560 157**	**Fourteenth Defendant**
WARATAH COAL PTY LTD **ACN 114 165 669**	**Fifteenth Defendant**
CHINA FIRST PTY LTD **ACN 135 588 411**	**Sixteenth Defendant**
COLD MOUNTAIN STUD PTY LTD **ACN 119 455 248**	**Seventeenth Defendant**
EVGENIA BEDNOVA	**Eighteenth Defendant**
ALEXANDAR GUEORGUIEV SOKOLOV	**Nineteenth Defendant**
ZHENGHONG ZHANG	**Twentieth Defendant**
SCI LE COEUR DE L'OCEAN	**Twenty-first Defendant**
DOMENIC MARTINO	**Twenty-second Defendant**
MARCUS WILLIAM AYRES	**First Defendant added by counterclaim**
STEFAN DOPKING	**Second Defendant added by counterclaim**

BRISBANE

FRIDAY, 3 AUGUST 2018

JUDGMENT

BOND J: On 19 April 2018, I made an order and case management directions in relation to the present proceeding. Amongst other things, I made directions 9, 10 and 12 as recorded in the schedule 2 to the order, the case management timetable. Those directions were as follows:

Item	Date	Step or direction	Party responsible
…	…	…	...
9	By 4:00pm on 13 July 2018	The parties are to meet with each other to discuss- a) the directions which should be made in order to order to permit the Court to determine the issues which arise on such applications as are filed in compliance with directions [4] and [8] above; b) whether there are any issues of fact or law that are appropriate for separate and preliminary determination; and c) whether the proceeding should be set down for trial for a period commencing in mid-February 2019 (or some subsequent fixed trial date) and, if so, for how long.	All parties
10	By 4:00pm on 20 July 2018	The parties are to submit a joint report to the Court identifying the parties' respective positions about the matters referred to in the previous direction.	All parties
…	…	…	…
12	On a date to be fixed in the week commencing 23 July 2018	The consolidated proceeding … be listed for further review to consider amongst other things the orders or direction which should be made in relation to the matters dealt with in the joint report filed in compliance with direction [10].	

Shortly after the making of those directions, I fixed the date referred to for the directions hearing in direction 12 to be 27 July 2018, last Friday.

Last Friday, the first matter I dealt with was an application by the defendants represented before me that I should make timetabling directions that would elicit any application to be made for a recusal by not later than 7 August 2018 and set a date for hearing of that recusal application, but that otherwise I should not make any further directions in terms of case management or setting trial dates or the like. Effectively, that application was for something analogous to a stay, although it was not formally a stay application. I rejected the application: see my *ex tempore* reasons for ruling dated 27 July 2018.

I then heard argument on a number of other issues, which ultimately resulted in my making an order which was formalised earlier this week but dated 27 July 2018, which amongst other things provided that the hearing today would deal with a number of matters. Paragraphs 4, 5 and 6 of that order were in the following terms:

3 August hearing – Disclosure and costs

4. The First and Second Plaintiffs' application filed 6 July 2018 be adjourned for hearing before Bond J at 10.00am on 3 August 2018, and the Defendants are to pay the First and Second Plaintiffs' costs thrown away by the adjournment.

5. The application to be filed by the First Plaintiffs for costs in respect of the First and Second Defendants' ex parte freezing order application heard on 11 and 22 May 2018 be listed for hearing before Bond J at 10.00am on 3 August 2018.

6. In respect of the applications referred to at Orders 4 and 5:

   (a) the First and Second Plaintiffs are to file and serve the material upon which they rely, and submissions, by 4.00pm 31 July 2018; and

   (b) the Defendants are to file and serve the material upon which they rely, and submissions, by 4.00pm 2 August 2018.

It is also necessary to record orders 24 and 25, which were in the following terms:

Trial date

24. Consolidated Proceeding 6593/17 be listed for trial for 60 days commencing in April 2019.

25. The question of the date in April 2019 on which the trial in Consolidated Proceeding 6593/17 will commence, and the making of associated directions, is adjourned to 3 August 2018.

Thus, at the end of last Friday, today was set as the day in which I would –

(a) finalise when in April 2019 the trial would start;

(b) make associated trial directions; and

(c) consider the other matters dealt with in paragraphs 4 to 6 quoted above.

Since then, two things have happened.

First, an appeal has been lodged from the directions that I made. The appeal appears to be lodged on behalf of all of the defendants who appeared before me. The grounds of the appeal are recorded as follows:

2. GROUNDS -

(a) The learned Primary Judge erred in law by making orders and directions for the future conduct of the proceeding in the circumstance of a high likelihood of an application being made for orders that he recuse himself from the proceeding.

(b) The learned Primary Judge erred in law in failing to apply to the commercial list review the principle that if an allegation of apprehended bias is made out, a retrial will be ordered irrespective of possible findings on other issues.

(c) The learned Primary Judge erred in setting the proceeding down for trial in April 2019 for 60 days, it being unreasonable or plainly unjust to do so in the absence of advance notification of the proposed date before the commercial list review on 27 July 2018.

(d) In setting the proceeding down for trial in April 2019 for 60 days, the learned Primary Judge failed to take into account, or gave insufficient weight to, the following relevant matters:

   (i) that there was a high likelihood that an application would be filed for orders that he recuse himself from the proceeding;

(ii) that if such an application were successful:

i. the trial date may be vacated;

ii. there would be wasted time and costs;

(iii) that amended pleadings were ordered to be filed and served (as to the statement of claim) and filed and served as an exhibit to an affidavit (as to the defence and counterclaim) and the issues in dispute may alter;

(iv) that discovery had not taken place;

(v) that applications for leave to proceed, and for orders striking out pleadings, were extant and undetermined;

(vi) a period of 60 days is a significant imposition on the parties, both as to time and costs;

(vii) a trial plan and pre-trial directions had not yet been determined or argued;

(viii) no circumstances of urgency had been established before the learned Primary Judge;

(ix) the availability of hearing dates was a matter entirely within his control and other dates could have provisionally be set aside, following argument and progression of the steps above.

Second, applications that I recuse myself were filed by Mr Palmer and by the first and second defendants. The first and second defendants advance the application that I ought recuse myself on the basis of apprehended bias. Mr Palmer advances the application on the basis of actual bias and apprehended bias. These are, at least for those three parties, the recusal applications which will be heard on 12 September 2018. I will return to the substance of those applications shortly.

That brings us to today's application. It is somewhat of a reprise of the application made last Friday. It is made more formally, in terms of an application for stay, and it is made in light of the changed circumstance of the actual filing of a notice of appeal and of the actual filing of recusal applications, as I have just explained. The stay application was filed on behalf of the first and second defendants. I gave them leave to alter its form so that it reads as follows in relation to the order that it seeks today:

> The orders and directions made by the Court on 27 July 2018, other than orders 10-15 inclusive (which provide directions for the hearing of any application for Bond J to recuse himself) be stayed until the later of:
>
> (a) the determination of the First and Second Defendants' application for Bond J to be recused from further involvement in the proceeding; and
>
> (b) further and alternatively, pursuant to rule 761(2) of the *Uniform Civil Procedure Rules* 1999, until the determination of Court of Appeal proceeding 8282 of 2018.

I gave Mr Palmer leave to bring an oral application in the same terms. Literally, that would have his application as an application for stay until the determination of the first and second defendants' application for recusal when probably it should refer also to his application for refusal. Having obtained confirmation from him that that would be his preference, I will treat his application as made in the same terms as made by the first and second defendants, but also referring to his own application for recusal.

If I refuse the stay application sought by those parties, then I would proceed to consider the discovery issues, the trial direction issues, and the question of trial date which my order made last Friday identified as being dealt with today.

Extraordinarily, counsel on behalf of the first and second defendants had delivered written submissions which provided submissions on those matters but withdrew those written submissions and told me in oral argument that in the event I refused the stay and proceeded to consider those matters, his instructions were not to make any submissions on those issues. My present apprehension is that Mr Palmer's position may be somewhat different. He may wish to advance submissions on those matters. I am not sure and I will deal with that at the conclusion of this judgment.

Another matter to be dealt with today is an application made by the special purpose liquidators for costs consequent upon Mr Palmer having indicated that he no longer intends to proceed with the application he filed on 12 April 2018 to seek the removal of the special purpose liquidators. That matter had been set down for hearing for three days commencing 27 August 2018, but I understand Mr Palmer has indicated that he does not intend to proceed with the application now. Mr Palmer has indicated that he regards his stay application as extending also to that question of costs.

I have received written and oral submissions from counsel on behalf of the first and second defendants, who has also told me that he appears on behalf of the other defendants except Mr Palmer and the 20th and 21st defendants, and that they support the application for stay. I received written and oral submissions from Mr Palmer also, those submissions being supplemented in two ways:

(a) First, by the fact that his affidavit material before me exhibits an amended notice of the appeal that he has lodged in respect of my decision on the freezing order application, which amongst other things raises as an appeal ground appeal ground 2(m):

> The learned Primary Judge erred in dismissing the Appellant's application for orders that the learned Primary Judge recuse himself on the basis of apprehended bias and erred in not recusing himself such bias and/or apprehended bias infecting the reasons for judgment and orders made.

(He has also put before me his submissions in the Court of Appeal, which seek to support all of the grounds of appeal but, in addition, the ground 2(m).)

(b) Second, he has also put before me draft submissions that he would ultimately file for the hearing of the recusal application to be heard on 12 September 2018.

I have read those written submissions and heard oral elaboration of those submissions by Mr Palmer.

It is only necessary to make brief summary of the basis of the error I have allegedly made previously in relation to refusing to recuse myself and of the basis upon which it is said that I should now recuse myself. So far as apprehended bias is concerned, the test is well known. I set it out in my reasons for judgment in *Parbery v QNI Metals Pty Ltd* [2017] QSC 231. The leading cases are *Ebner v the Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] and [8], and *Johnson v Johnson* (2000) 201 CLR 488 at [13]. The written submissions on appeal and the draft submissions of Mr Palmer refer to those and other decisions.

So far as apprehended bias is concerned, although there are other grounds advanced, the case seems to be that the manner of reasoning and findings that I made in my decision on the freezing application reflected adversely in many respects on Mr Palmer, so adversely that when it comes to the final trial of this matter, it is contended that I should disqualify myself because a fair-minded lay observer might reasonably apprehend that I might not bring an impartial mind to the resolution of the questions I am required to decide. The notion is that if I have made the various findings I made in the very lengthy judgment on the freezing application, when it came to hearing the trial – at which Mr Palmer's credit would be at issue in very many ways – the fair-minded observer might think that I would not be able to bring an impartial mind to the task of fact-finding on a final basis in anything that concerns Mr Palmer. The same proposition is also advanced in relation to Mr Martino.

A question relevant to the disposition of the stay application is whether there is a good arguable case that I ought recuse myself. Senior counsel for the plaintiffs says that there is not. He says that any fair-minded lay observer who reads the judgment would have regard to the context within which such observations as might be regarded as adverse to Mr Palmer were made, including that:

(a) they were made upon evidence that then stood;

(b) they were made on an interlocutory basis;

(c) they were made within a framework that contained the very many qualifications that appear in the judgment; and

(d) there is no arguable case that such a person might reach a conclusion that they might reasonably apprehend I might not bring an impartial mind to trial fact-finding.

I am not prepared to accede, for the purposes of disposing this stay application, to the proposition advanced by senior counsel for the plaintiffs. I will proceed on the assumption that there is a good arguable case of apprehended bias. I will deal with the argument when it is advanced to me on 12 September 2018. But for present purposes, I propose to assume that there is a good arguable case for apprehended bias.

I should turn, however, to the question of actual bias, which, as I said, is advanced only by Mr Palmer. Mr Palmer took me to the draft submissions that he proposes to put before me at the hearing on 12 September; indicated, of course, that those submissions were not finalised, but took me to paragraphs 78 to 85 of those submissions, which were in these terms (citations removed):

> 78. On 14 September 2017, during the hearing of an application by the SPL for freezing orders against several of the defendants (including the applicants on this application and Mr Palmer), and during the cross examination of the fourth defendant Mr Palmer, Bond J asked Mr Palmer to leave the court room so that he could discuss matters with Counsel.
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> 79. In the absence of Mr Palmer, Bond J. said that findings he had made at paragraph 38 in the Queensland Nickel declaration proceedings, "that the joint venturers and Queensland Nickel Sales contended that Queensland Nickel was obliged to comply with the demand and give its property back, and that Queensland Nickel was not

entitled to use any part of joint venture property to discharge any of the debts which it might have incurred, which is, kind of, contrary to the evidence of the witness"

80. At the commencement of the following day of the hearing, Bond J. stated that he had wanted to raise a matter in the absence of the witness because it might affect then course of his cross-examination, that he had asked Mr Palmer to step aside and said:

> "Now, that's unremarkable in the course of trials, except for the fact that Mr Palmer's a party. So, if I subsequently dealt with the subject matter that I raised in his absence, without him being given opportunity to know what it was, that would be problematic. On the other hand, if there's a matter I wanted to raise because it would affect cross-examination, but I raised it with him present, that would be problematic as well."

81. Bond J then gave Mr Palmer an opportunity to read the relevant pages of the transcript, "to put him in a position to re-examine, so to speak, on the subject matter that I raised. That seems to me to be fair in that it gives him an opportunity to know what it was that was raised in his absence, and it wouldn't – it doesn't have the potential of affecting the course of cross-examination, because the cross-examination would be over."

82. Bond J's took the extraordinary steps to protect the integrity of his earlier judgment by excluding Mr Palmer, a self-represented litigant, from the Court Room and raised the inconsistency with counsel for the Applicants, prompting questioning that to support his previous finding

83. This is not proper nor appropriate conduct and demonstrates the His Honour did not bring and unprejudiced and impartial mind to the determination of issues in dispute; instead sought to affirm his previous judgment.

84. Implementing the extraordinary course of action of excusing Mr Palmer and raising the inconsistency with counsel for the Applicants, was designed to enable His honour to protect the integrity of his earlier judgment which he ultimately affirmed.

85. Whist His Honour was seemingly willing to hear evidence on the relevant issue, it is submitted the primary purpose was to elicit evidence in support of the findings in the Declarations Proceedings which His Honour sought to affirm in the Mareva Application and could not have been swayed by the evidence in the case at hand.

He also relied in support of the contention that I should regard there as a good arguable case that I should disqualify myself for actual bias on a general reference to the findings I made in the judgment on the freezing order application, on the transcript of everything that occurred in that application and on all of the evidence in the Mareva application.

There is no good arguable case for actual bias. There is not the slightest support for a case for actual bias. That is how I will proceed to deal with the stay application before me.

I should observe that in expressing those views, the approach I take to a contention for actual bias is that anyone advancing that contention - which is a serious allegation of misconduct against a judicial officer - should apply the same degree of responsible consideration of material and being able to identify chapter and verse what is said to support it, as a person should take in advancing a fraud allegation. I do not regard the level of particularity or attention to detail as having been met by the matters to which I have adverted.

So in dealing with the stay application, I do not regard there as being any support for a contention of actual bias.

I will assume there is a good arguable case for apprehended bias. However, the greatest problem that there is in the stay application that is advanced is the problem that, to my mind, reveals the stay application is entirely misconceived, and that is the inability whatsoever to connect those matters that are said to support the contention of apprehended bias with the question whether I could bring the requisite state of mind to bear to the considerations which are dealt with on commercial list directions hearings and which will be dealt with in the event that I do not accede to the stay application: namely, what orders should be made in relation to document handling protocol, disclosure, trial dates and trial directions.

An attempt was made to say that the same considerations which inform judgements made by trial courts in regarding it necessary to stay proceedings until recusal applications are determined in the midst of the trial or to deal with recusal applications first in intermediate Court of Appeal determinations apply in the current context. The simple matter is they do not.

In the trial context, the reason why trial judges dealing with recusal applications often determine not to proceed further until they have dealt with the recusal application is they would be, if they proceeded further, embarking upon the process of making final determinations on questions of fact. If the underlying complaint about their conduct is that a fair-minded lay observer would conclude that they would not bring a fair mind to that question, then they determine they should resolve that question before proceeding further to make those determinations.

But the argument that I am prepared to assume there is a good arguable case about is the good arguable case about matters that might affect whether I should hear the trial of this matter or whether I should hear matters that actually do involve a determination on questions of credit concerning Mr Palmer and possibly Mr Martino, if such an application came along. That does not have the slightest thing to do with the matters I have to deal with today if I refuse the stay application. So it seems to me that that flaw is a flaw that lies at the heart of the application for stay that is brought before me so far as concerns the recusal application.

Even if that was not a sufficiently fatal flaw insofar as the stay application relies on the recusal application, there is then the flaw in the proposition that timetabling decisions that I might address as contemplated by the order I made last Friday would be wasted. That proposition was advanced by Mr Byrne on behalf of all defendants for whom he appeared and also by Mr Palmer. I reject the argument. This matter will come to trial. Disclosure will occur. Timetabling directions will have to be met. If, on 12 September 2018 or as soon thereafter as I can make a decision, I determine that I should not handle the trial, then the fact that I would have made the decisions that will have, *ex hypothesi*, been made by me will not lead to waste. Whoever manages the case after me will have the benefit of the fact of those directions having been made and the parties having presumably complied with orders made by the Supreme Court of Queensland.

Mr Palmer contended that there was prejudice because the making of directions by me today would be likely to have certain forensic consequences concerning allocation of resources, priorities, the issues they might run and that if I recuse myself and someone else comes in to manage the timetable, they might take a different view. It strikes me that, really, that is just an attempt to slow down these

proceedings and assume that at a later date, a different outcome might be achieved. But this is a matter being dealt with on the commercial list. It is a matter in which the plaintiffs, for their side, seek to recover moneys from various defendants that I have described in detail in the freezing order judgment. It is a matter where, on many of the defendants' side, they contend that they have been grossly wronged by conduct by the liquidators, so badly that they have suffered huge pecuniary losses. These are matters which need to be resolved.

I am conscious that I am to hear an interlocutory dispute in October in which some parties seek summary disposition, in effect, of some of these issues. But again, they have to be resolved in an ordered way. They ought be resolved as speedily as may be appropriate. I reject the contention, as I did in my judgment last Friday, that there is any likely waste of time and resources if I refuse the stay application and make some directions on the subject matters that I will deal with if I refuse the stay application.

So far as the stay application is supported by the hypothesis that I should stay the proceeding pending determination of the recusal application, I reject the argument for stay.

The argument for stay application pending appeal deals with much the same issues but is conceptually a little different.

The first thing I should consider is whether there is a good arguable case on appeal.

For reasons that underlie the observations I have made rejecting the stay application so far as it relates to the recusal application today, and for similar reasons as I expressed last Friday, I do not think there is a good arguable case for appeal grounds 2(a) and (b).

The proposition that there is a good arguable case for ground 2(c) is, to my mind, unsupportable in any way. I have already referred to the order that I made in April that made it very clear that I would, at the directions hearing that was ultimately set on 27 July, deal with the question of trial date. I should record what happened during the course of the argument last Friday. During the course of the argument, I made it clear to everyone present in these terms:

> Well, it seems to me I ought to make a decision as to whether, and if so when, I'm prepared now to set a trial date, and if I'm persuaded to do that then we can fill in the detail after making that decision.

I then heard submissions from counsel on behalf of the defendants, from Mr Palmer and from counsel on behalf of one other defendant, Ms Bednova. I heard submissions from the plaintiffs. I said I would consider the matter over the luncheon adjournment and adjourned until 2.30pm. I came back and indicated that I was minded to set the matter down for trial commencing the beginning of April next year. Now, to my mind, nothing could have been clearer to anyone who had read the order that I made in April and to anyone who had paid attention to the course of events that morning than that I was addressing the question of trial date. There is no arguable case in support of appeal ground 2(c). Mr Palmer advanced the proposition in his affidavit material before me and in oral argument that somehow I deprived him of the opportunity of saying that he will be involved in political matters, perhaps

running for Parliament again, at an election, which might make a trial in April and May 2019 difficult for him. Those were matters that he was perfectly able to mention when I gave him the opportunity to make submissions. He neither mentioned them nor put any evidence before me about them. Indeed, he could have advanced the same considerations if he had returned to the directions hearing after lunch. He did not. Mr Iskander apparently represented his interests after lunch. Mr Iskander made no submissions on those matters.

I have considered proposed appeal ground 2(d), which says that I failed to take account or gave insufficient weight to the various matters there identified. The appeal would be an appeal from a decision on those matters made by the commercial list judge. It would need to demonstrate that I made error in the sense dealt with in the well-known decision of *House v The King* (1936) 55 CLR 499. No argument identifying any basis for such error has been presented before me. I do not regard there as being a good arguable case on appeal in those matter.

However, I do not reject the application for stay, pending appeal, solely on the basis that I do not think there is a good arguable case for appeal. The submission was also advanced that if I refuse to grant a stay pending the determination of the appeal, that would lead to the appeal rights being rendered nugatory. That question, which is really another way for saying the appellants would suffer irretrievable prejudice, would, if established, be a strong reason in favour of granting the stay pending appeal, but the basis for the proposition that appeal rights would be rendered nugatory turns on the notion that the timetabling orders that I did make and which I might make in relation to the matters otherwise to be dealt with by me today, would be wasted, or irretrievable prejudice would be suffered, even if the appeal is upheld. But I do not accept that there is any consequence that should be so regarded.

The most that could be expected is an alteration to the timing of the matters with which, *ex hypothesi*, I would have dealt with in advance of the appeal, but these are matters that will need to be dealt with in the course of the interlocutory steps in this case. Even if the timetable changes, consequent upon the Court of Appeal allowing the appeal and remitting those matters back to me or another judge, that which will have been spent in the interim seeking to address the timetable that would be operative would not be wasted.

It might be that some money was spent earlier than it might otherwise have been spent, but in the context of this large and complex case, I accept the submission by senior counsel for the plaintiffs, that that sort of prejudice should be regarded as *de minimis*. Mr Palmer suggests that the prejudice concerning his decision to commit himself to political activities in April/May 2019 is somehow to factor into this argument. If there is such prejudice, it will be because he has made - in the context of this litigation and the stage at which this litigation has reached - a choice to prefer political activity to dealing with these matters. It does not seem to me that the consequences of his making and adhering to such a choice lie on anyone but himself. I do not regard them as irremediable prejudice or irreparable harm in the sense which is requisite to support a stay application.

On the other hand, there would be prejudice by further delay of this litigation. It is prejudice, apparently, that the defendants are prepared to contemplate. It is prejudice that the plaintiffs are not. They point to the general adverse consequences of further delay in resolution of this case that has already been some little time in the

resolution. They point to the seriousness of the allegations that have been advanced against the liquidators and the need to have them resolved. I agree with the complaint pointing to those matters.

For the reasons that I have articulated, I dismiss the applications for stay which have been placed before me.

...

HIS HONOUR: The orders I make on Mr Palmer's oral application for stay are as follows:

(1) application dismissed,

(2) Mr Palmer pay the costs of the application of the first to third plaintiffs and the first and second defendants added by counterclaim.

The orders I make on the stay application advanced by the first and second defendants are as follows:

(1) application dismissed,

(2) the first to third defendants, the fifth to nineteenth defendants and the twenty-second defendant pay the costs of the application of the first to third plaintiffs and the first and second defendants by counter-claim.