

1 Gunns Limited

2 v.

3 Alexander Marr & Ors.

4 (11/03/05)

5 (Bongiorno J)

6 MR GRONOW: Your Honour, I appear with my friend, Mr Thompson
7 for the 7th, 14th, 15th, 16th and 17th defendants.

8 HIS HONOUR: Yes.

9 MR GRONOW: My friend, Mr Laurence Maher, appears for - - -

10 MR MAHER: The 10th, 11th and 12th - that's Senator Brown;
11 Ms Putt and Ms G.

12 HIS HONOUR: Yes. Who is for the plaintiff?

13 MR GRONOW: There's no appearance for them. They've consented
14 to some orders and I have some signed minutes signed by
15 everybody except for Mr Maher's clients, but he's here to
16 consent. We seek four orders this morning by consent -
17 firstly that this proceeding be admitted to the major
18 torts list.

19 HIS HONOUR: Yes.

20 MR GRONOW: Secondly, that my clients have leave to file an
21 amended summons exhibited to the affidavit of Ms Jodie
22 Nicholls, sworn 9 March. We got a bit confused about
23 which defendants we acted for and we have corrected it.
24 Thirdly, that this directions hearing be adjourned to
25 8 April 2005. The reason for that is that two of the
26 defendants have yet to be served and the adjournment is
27 to give the plaintiff an opportunity to serve them. We
28 would hope that by 8 March we would either have agreed on
29 a detailed directions timetable, or if we haven't we'll
30 be able to argue about it, and fourthly, we seek an order
31 that costs be reserved.

1 HIS HONOUR: Yes. I've got a couple of queries in relation to
2 this matter. It's unfortunate the plaintiffs'
3 representatives are not here, but before we get to that,
4 a number of the defendants have filed what are said to be
5 conditional appearances. They will have become
6 unconditional by effluxion of time at this stage. I
7 assume that no-one is seeking to move on conditional
8 appearances. Is that right?

9 MR GRONOW: Not as far as we know. I think - Your Honour's
10 just said they're too late if they do.

11 HIS HONOUR: Yes, I they do, but I wanted to clear that up.
12 The second thing is that whilst I'm happy to make the
13 consent orders apart from the matter relating to a
14 summons by the defendant, the reason for that is that
15 having looked at the statement of claim it seems to me
16 that there needs to be some attention to that document
17 before this case goes any further. There's little point
18 in my saying anything about it in the absence of
19 solicitors and counsel for the plaintiff, and I won't,
20 but you're proposing to come back on 8 April.

21 MR GRONOW: Yes, Your Honour. We would hope by then everybody
22 has been served, and we would then be able to put various
23 matters, including matters concerning the statement of
24 claim.

25 HIS HONOUR: What was the summons about again? That was to
26 regularise some appearances, I think.

27 MR GRONOW: No, we initially issued a summons to bring the
28 matter here today and get it admitted into the list. By
29 mistake, we purported to issue a summons for two people
30 for who we do not presently act. We naturally wish to
31 correct that error and file an amended summons just on

1 behalf of the - - -

2 HIS HONOUR: I see. Just - - -

3 MR GRONOW: It's the same as the previous one except that
4 instead of saying the 7th, 8th, 9th, 14th, 15th, 16th and
5 17th, it just says, "7th, 14th, 15th, 16th". The 8th and
6 9th defendants have not been served. It may well be that
7 they will choose to instruct my present instructing
8 solicitors to act for them when they are but they haven't
9 been yet. One reason for the adjournment is to enable
10 the plaintiff to serve them.

11 HIS HONOUR: I might - you were indicating that by 8 April you
12 would expect or hope to have an agreed timetable. It
13 might be appropriate if - by all means engage in those
14 negotiations, I wouldn't want to stop you, but I will
15 require attendance of everybody on that day,
16 whether - - -

17 MR GRONOW: We'll make that clear.

18 HIS HONOUR: Whether there are consent orders or not.

19 MR GRONOW: Yes, Your Honour.

20 HIS HONOUR: Because I think there needs to be some discussion
21 at least about the way in which the case is pleaded.

22 MR GRONOW: Yes, Your Honour.

23 HIS HONOUR: For the purpose - just for the management of it.

24 At the moment there are certain concerns I've got in -
25 just on a logistical basis, as to how the court can best
26 deal with it and how the defendants can deal with each -
27 with those parts of it which relate to each of them.

28 MR GRONOW: Yes, Your Honour.

29 HIS HONOUR: If it all doesn't relate to all of them. Having
30 read it - or having perused it I would say rather than
31 read it, it seems to me to have some difficulties about

1 it but they can be ironed out, so I'll adjourn the matter
2 till 8 April. I'll give you leave to amend the summons
3 in the way indicated. I'll reserve costs and I'll admit
4 it to the major torts list.

5 MR GRONOW: Thank you, Your Honour.

6 HIS HONOUR: I will direct that at the 8 April hearing, that
7 all parties - the representatives of all parties be here
8 whether they are seeking consent orders or not.

9 MR GRONOW: Thank you, Your Honour. Could I hand up the
10 minutes?

11 HIS HONOUR: Yes.

12 MR GRONOW: It's in the form of a letter addressed to your
13 associate and there are various - sort of by counterparts
14 as it were - everybody has signed it accept for
15 Mr Maher's clients but he's here.

16 HIS HONOUR: Yes.

17 MR GRONOW: I have instructions to consent to those orders,
18 Your Honour.

19 HIS HONOUR: Consent, yes.

20 MR GRONOW: Could I, just out of an abundance of caution, refer
21 to one other matter, and that is that Your Honour will
22 have observed that there's a Tasmanian connection to this
23 case.

24 HIS HONOUR: Yes.

25 MR GRONOW: At the moment there's no issue about cross-vesting,
26 and simply admitting to the case doesn't preclude that of
27 course.

28 HIS HONOUR: No.

29 MR GRONOW: Just so that, out of an abundance of caution from
30 the point of view of my clients at least - I really can't
31 speak for any of the others - that question may or may

1 not arise. At the present it doesn't - - -

2 HIS HONOUR: It hasn't, but it - you're simply saying you're
3 acting at the moment without prejudice to your right to
4 issue a cross-vesting application at some future time.

5 MR GRONOW: In short, yes, Your Honour.

6 HIS HONOUR: Very well. I think that's probably preserved in
7 any event but I'll note what you say. I'll make an order
8 - I think there's probably no need to formally take out
9 this order in light of its relatively few provisions.

10 MR GRONOW: Yes, Your Honour.

11 HIS HONOUR: The paucity of its provisions I was going to say.

12 It's simply an adjournment to 8 April with a direction
13 that at that point everyone - all representatives be
14 here.

15 MR GRONOW: Yes, Your Honour. Could I hand up a copy of the
16 amended summons?

17 HIS HONOUR: Yes.

18 MR GRONOW: It's the same as the last one except the 8th and
19 9th defendants are crossed out.

20 HIS HONOUR: Yes. I should also say that insofar as there - we
21 might need an order. Insofar as there is time running
22 for defences, that should stop.

23 MR GRONOW: There has been an agreement, I think, so far - some
24 defendants have actually filed defences and some haven't.

25 HIS HONOUR: Yes, I noticed that.

26 MR GRONOW: Certainly I'm happy to have such an order although
27 my only reservation is that we told the plaintiffs and
28 other people they didn't need to attend because we'd only
29 be seeking those four orders.

30 HIS HONOUR: Yes.

31 MR GRONOW: We, as I understand it, do have an agreement, and

1 one of the things that might have to be agitated on
2 8 April is when defences have to be served and whether
3 it's - for example, before or after particulars and other
4 matters, and that will be a matter you may have to
5 determine.

6 HIS HONOUR: There is clearly liberty to apply, but without
7 making an order I'll say that if an order were sought
8 seeking a stay on defences, I would grant it.

9 MR GRONOW: Thank you, Your Honour.

10 HIS HONOUR: There won't be any order but if it were sought I
11 would grant it, so the plaintiffs' solicitors should be
12 informed of that as should those other representatives of
13 the defendants who aren't here.

14 MR GRONOW: Yes, Your Honour, I understand.

15 HIS HONOUR: I think it would be undesirable for defences in
16 this case to be filed whilst the question of how the
17 matter's going to be proceed is still being agitated.

18 MR GRONOW: Yes, Your Honour. I think two sets of defendants,
19 Mr Maher's clients and what I might call the Phillips Fox
20 defendants, haven't - no, not Phillips Fox, sorry, the -
21 yes, two of the defendants have filed defences.

22 Everybody else is operating under an agreement with the
23 plaintiffs that they won't apply for default judgment
24 until we've sorted other matters out.

25 HIS HONOUR: As long as that's understood.

26 MR GRONOW: Yes, Your Honour.

27 HIS HONOUR: This transcript will record what I have said and
28 what you've said. Thank you, gentlemen.

29 MR GRONOW: Thank you, Your Honour.

30 MR MAHER: If Your Honour pleases.

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