Injunctions and Foreign Assets

A recent judgment in Queensland has considered whether foreign assets could be frozen by injunction. Mr Justice Lee gave judgment on this issue as a preliminary point of law in *Planet International Ltd (In Liq) v Garcia*, Qld Law Reporter, 29 July 1989.

The basic grounds that need to be satisfied to obtain an injunction restraining the disposal of assets within the Court's jurisdiction are common. They were summarised by the Judge as follows:

- the plaintiff must have a substantive cause of action within the jurisdiction;
- the plaintiff must show that he has a good arguable case;
- there must be a real danger of dissipation of assets such as to affect any judgment; and
- it must be just and convenient to grant the injunction.

The Judge said that whilst orders should normally be confined to assets within the jurisdiction, there were cases, such as this, where it would be appropriate to make an order protecting foreign assets.

The Judge followed a recent English Court of Appeal case, *Derby & Co Ltd v Weldon*, 2 WLR 276, which had permitted a world wide injunction because of the exceptional circumstances of the case. Similarly, the Supreme Court of Victoria in *National Australia Bank Ltd v Dessau*, 1988 VR 521, had also granted such an extra-jurisdictional injunction.

Lee J's decision did not involve a review of the facts, so the circumstances behind the case are unclear. The case is of interest because, although the defendants had submitted to the Court's jurisdiction, there was no evidence that either of them at any time had assets within the jurisdiction. In the other two cases noted above, the defendants did have assets within the jurisdiction, so the point was not discussed.

An injunction of this nature will normally be subject to the type of safeguards imposed in *Derby v Weldon* which include:

- protection for the defendant from multiple proceedings in foreign jurisdictions;
- prevention of misuse abroad of information gained by the plaintiff; and
- confinement of the injunction to the defendant personally rather than the imposition of an obligation on, say, third party banks.

In showing to the Court that the circumstances are sufficiently exceptional to justify an injunction over foreign assets, it is not necessary to prove misconduct or dishonesty. However, evidence suggesting dishonesty, coupled with apparent attempts to conceal assets overseas, clearly influenced the Court in *Derby v Weldon*. Also, whilst an order requiring full disclosure of details of assets (wherever located) was draconian, such an order was certainly warranted in special circumstances.

- **David Archer, Associate, Baker & McKenzie, Solicitors, Melbourne.**

Application for Separate Trials of Discrete Issues

Eglo Engineering Pty Ltd v Alcoa of Australia and Others, Supreme Court of Victoria, Nathan J, 29 March 1989.

I had some reservations whether this case was worthy of a case note. However, I was persuaded to so so for two reasons.

Firstly, the Lawscript title page showed that this building case was to be decided by Nathan J with a jury of six. Here, I thought, was a case worth reporting for that fact alone, a building case being decided by a judge and jury of six. Alas, delving into the transcript I found that the jury had disappeared and Nathan J was there alone on the bench by himself, unaided by 6 good men (sorry persons) and true.

I then delved into the facts of the case. The plaintiff was an engineering contractor who had entered into two contracts to erect a conveyor belt system and an overburden and conveyor belt system and associated equipment at the Portland Smelter Works for Alcoa and its joint venture partner. The claims in the Writ involved a number of issues - there were claims for extensions of time, costs for delay allegedly caused by the defendants, for costs for other delays arising out of industrial disputes and inclement weather, and residual claims for quantum meruit and under the Trade Practices Act.

The essential issue was whether the defendants were entitled to orders from the judge in charge of the Building Cases List, Mr Justice Nathan, that a number of issues be tried separately. In fact, the defendants sought to have five issues tried separately.

The judge examined each of the five separate issues and on balance felt that there was no advantage either in the saving of time or cost in ordering separate trials of the various issues. He quoted with approval *Dunstan v Simeon* (1978) VR 669 that the order to have separate trials of discrete issues should only be invoked in building cases so long as there were appropriate issues to be isolated and it was likely to save inconvenience and expense.

He felt on the overall consideration of the issues that there would not be any overall reduction in time or saving of expense by ordering any of the issues to be tried separately.

The case is therefore worthy of report as being one of those rare cases where an application has been made to have separate issues tried separately.

Thankfully the judge in charge of the building cases list concluded on the balance that such a course was undesirable in the circumstances.

- **John Pilley, State Director, BISCOA, Victoria. Reprinted with permission from Building Dispute Practitioners' Society Newsletter.**