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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.No. 256/80

1511

BETWEEN

AUSTRALIAN GUARANTEE
CORPORATION (N.Z.)
LIMITED

PLAINTIFF

A N D

BROADLANDS FINANCE
LIMITED

DEFENDANT

Hearing : 16th November 1984
Counsel : Grove for defendant in support
Carruthers for plaintiff to oppose
Judgment : 22nd November 1984

JUDGMENT OF SINCLAIR, J.

This is an application on behalf of the defendant from an order staying execution of a judgment given in favour of the plaintiff in respect of a judgment of Thorp J. delivered on the 11th October 1983. The action has its origins in some devious dealings by a person in Palmerston North in relation to some motor vehicles and a question arose as to which of the above parties was entitled to the proceeds of the sale of those vehicles.

Prior to the action being determined the parties themselves had come to an arrangement whereby the motor vehicles should be sold and that the proceeds were to be equally divided between each of the parties and each party was to invest its share on short term deposit at call at the current rate of interest paid by such party from time to time on such an investment, the monies to be held in the joint names of the plaintiff and the defendant "until this action has been heard and determined or until the further order of this Honourable Court".

The plaintiff was successful in the action and now seeks to recover from the defendant the one half of the proceeds of the sale of motor vehicles plus the accrued interest. The defendant has filed an appeal to the Court of Appeal and seeks to retain the monies in question until the decision of the Court of Appeal is known.

The Court has a wide discretion in relation to an application of this nature but the general rule is the successful party is entitled to the fruits of its litigation. The grounds generally considered by the Court in relation to such an application are conveniently summarised in Thompson v Commission of Inquiry [1983] N.Z.L.R. 98 at page 115.

Barker J. refers to four relevant matters which will be considered by the Court in relation to such an application. They are as follows :-

- (a) If no stay is granted the applicant's right of appeal will be rendered nugatory: That has no application in the instant case.
- (b) The successful party will not be injuriously affected by a stay: So far as the plaintiff is concerned, in the instant case, it may be that the plaintiff will not be injuriously affected if it does not receive the monies immediately as it is a wealthy company with large assets. However, it is not able to deal with the monies itself which, in today's financial climate, money can be made to earn quite extraordinary rates of interest.
- (c) The bona fides of the appellant: That does not really arise in the present case although Mr. Carruthers did point to the fact that no memorandum as to the grounds of appeal had yet been filed in Wellington but Mr. Grove indicated that they would be filed immediately.
- (d) Questions involved in the appeal are novel and important: Mr. Grove argued that in this case the trial Judge gave judgment for the plaintiff in the face of an established line of authority and that, therefore, this particular appeal could be regarded in the novel category.

However, as against that, the plaintiff has been kept out of its money since 1979 and the amount involved, with accrued interest, is just over \$70,000.

Having regard to the background of the litigation, the financial status of the two parties involved, I am firmly of the view that the appropriate course to adopt in this case is to refuse the present application and to require the defendant to account to the plaintiff for the fruits of the successful litigation. I am reinforced in this view by the fact that the parties themselves, in 1980, agreed that the monies would be held until the determination of the action. That has occurred and I am of the view that, in accordance with the the contractual arrangement made, the present defendant ought to account to the plaintiff for the monies in question.

Accordingly, the motion will be dismissed with costs of \$100 to the plaintiff.

P. P. King

Solicitors :

Defendant : Anthony Grove & Darlow, Auckland.
Plaintiff : Chapman Tripp, Auckland.