

BETWEEN W.R. HURST
 Plaintiff
AND P.G. ALEXANDER
 First Defendant
AND F. POELMAN
 Second Defendant
AND H. DE JONG
 Third Defendant
AND ARAHI PROPERTIES
 LIMITED
 Fourth Defendant
AND B.C.A. HOOKER & ORS
 Fifth Defendants

Hearing: 12 August 1987

Counsel: Dugdale for Applicant
 Johnston for Plaintiff

Judgment: 12 August 1987

(ORAL) JUDGMENT OF THORP J

This is an application for review of an ex parte order made by Quilliam J on 7 April 1987 in effect freezing the whole of the shares in the company Arahi Properties Limited, then held in the names of the first, second and third defendants.

The basis of the application was that

the plaintiff and those defendants had been engaged in dealings which resulted in their receiving some 7.375m shares in Arahi Properties Limited, which were to be held in trust for the group pending resolution of their respective interests in those shares.

The language of the ex parte motion is such as one would expect to find in such an application, being clearly directed to the preservation of the applicant's interest in the shares.

At a part hearing of the present application to review that ex parte order it was agreed that the extent of the preservation order far exceeded any possible interest of the plaintiff in those shares and by agreement the ambit of the order was reduced to cover 834,000 shares.

Today Mr Dugdale has argued first that, although the Court may have jurisdiction under R.331 to make a preservation order in respect of company shares the jurisdiction is not appropriate in the case of shares in public listed companies which he described as being in the nature of negotiable property.

Mr Johnston's response to this argument was that if the Court were given evidence of a trust in relation to shares, be they publicly listed company shares or otherwise, that was a sufficiently special characteristic to justify exercising its jurisdiction; and with that submission I agree.

Mr Dugdale added to his first submission on the threshold question of whether the jurisdiction question should have been exercised the submission that the affidavits filed by the plaintiff, both in support of the initial application and in opposition to the present application, show an interest in the

preservation of his investment rather than in the preservation of his equitable right to particular shares. The passages to which he referred do show a concern on the part of the application for money's worth, but that does not seem to me to negate his entitlement to an order, provided that the order is appropriately measured.

This raises the second issue at the hearing today namely the extent of any order to be made by the Court, now that further evidence is before it.

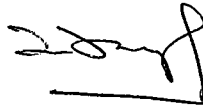
There still remains some factual controversy about the likely extent of the plaintiff's interest in the shares.

Mr Dugdale's clients calculate that at the most he would be entitled to some 138,000 shares. The plaintiff put the minimum figure at 281,525 shares but in a late affidavit filed today casts some doubt on the accuracy of the schedule to the basic agreement as it appears in Mr Poelman's affidavit on which his first estimate was made. I cannot resolve that issue. In my view if the Court is asked to exercise its jurisdiction in a matter of this nature it should make reasonable allowance for the likely or at least the credible limit of the plaintiff's interest, and I propose to allow the preservation order to remain at a total of 300,000 shares. The difference between that figure and the figure first cited by the plaintiff is simply to give some realistic allowance for the problems raised in the late affidavit. The figure disallows the submission of Mr Johnston that the Court should take into account a variation in the market value of the shares. That would in my view convert the preservation order into a security order and be a misuse of the R.433(1) jurisdiction.

The application is accordingly allowed to the extent of reducing the requirement that the defendants retain shares to the requirement that they retain until further order of the Court, a total of 300,000 shares.

Leave reserved to apply for further direction.

Costs reserved.

A handwritten signature in black ink, appearing to be 'J. Kent', written over a horizontal line.

Solicitors

Kensington, Swan for Applicant
Earl, Kent, Alexander & Bennett for Plaintiff