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LITIGATION NEWSLETTER

Creevey Russell LAWYERS

excellence in law, service and communication

WHAT IS SECURITY FOR COSTS?

The Uniform Civil Procedure Rules 1999 (Qld) (the UCPR) allows a defendant in a Court proceeding to apply to the Court for Orders requiring the plaintiff to give what is called 'security for costs'.

The philosophy behind the rule is that in some circumstances, a plaintiff should not be allowed to proceed with its case against a defendant unless the defendant has been assured that the plaintiff will meet any costs order made against the plaintiff in the proceedings.

The amount of security to be paid in each case is to be determined by the Court having regard to a number of factors including the nature of the proceedings, the anticipated procedural steps and the number and length of hearings. Security is commonly provided by making a payment of funds into Court or by way of bank guarantee.

Creevey Russell recently successfully defended an application for security for costs brought in the Supreme Court of Queensland in the matter of Pure Casting Pty Ltd (as trustee for the Pure Casting Unit Trust) v Long [2020] QSC 325.

THE DECISION

In this case, Her Honour Bowskill J had to consider whether the relevant prerequisite for ordering security for costs had been established.

The relevant prerequisite in this case was whether the Court could be satisfied that there is reason to believe the plaintiff corporation will not be able to pay the defendant's costs if ordered to pay them.

If this prerequisite is met, the Court must then consider a number of discretionary factors under rule 672 before deciding whether or not to order that security for costs be given.

The onus is on the defendant to present evidence from which the requisite reason to believe may be inferred and also to persuade the Court that such an inference ought to be made.

At the hearing, we put substantial evidence before the Court to resist the application, including a detailed summary of the plaintiff's current and forecasted future financial position which resulted in Her Honour Bowskill J finding that the prerequisite for ordering security had not been met by the defendant.

It was therefore not necessary for the Court to consider the discretionary factors in rule 672 and the application was dismissed with an order for costs being made in our client's favour.

HOW CAN WE HELP?

Consideration as to whether an application for security for costs should be brought (or if and how it will be resisted) should be given in litigation proceedings at an early stage. These applications have the potential to bring the proceedings to an end (if security is ordered but not given) and can provide significant strategic advantages at a crucial stage. It is vital that one seeks advice from an experienced litigation lawyer to ensure an adverse outcome does not stifle a proceeding in its early stages.

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ELECTRONIC OR 'ETRIALS'

For many years the Courts have encouraged the use of technology to help facilitate efficient and cost-effective litigation. One common example is found in Supreme Court Practice direction 10 of 2011 which requires that parties to a dispute utilise technology where possible to assist with the task of disclosure (the task of exchanging documents relevant to a dispute). Another example, seen more in recent times is the ordering of what is known as an 'eTrial'.

An eTrial is a trial that is conducted with the assistance of computers and software within the court room that allows all documentary evidence to be viewed electronically. Any document can be viewed on monitors throughout the court room rather than handing out multiple, often voluminous paper copies. An eTrial is typically used for larger cases where there more than 500 key documents. This helps reduce costs and improve efficiency whilst conducting the matter.

All documents that are intended to be part of an eTrial are uploaded to what is called the 'eCourtbook'. The 'eCourtbook' is maintained by the Court and is essentially a repository of documents to be referred to during trial. The documents for the eCourtbook are provided by the parties to a dispute to the Court in accordance with the document management plan that has been agreed by the parties.

The document management plan dictates what types of documents are considered 'critical documents' which should be included in the eCourtbook. It is critical that proper consideration is given to the document management plan at an early stage in proceedings because it will impact the running of any hearing.

CREEVEY RUSSELL AND 'ETRIALS'

Creevey Russell Lawyers recently ran an eTrial in the Supreme Court of Queensland in Brisbane.

The matter was a class action and Creevey Russell represented a number of farmers that purchased a contaminated seed. Given the number of parties and documents involved, the parties in the case agreed that the task of disclosure and the trial should be conducted electronically.

We engaged an external service provider to assist with the presentation of the evidence in Court and the uploading of documents to the eCourtbook. There were in excess of 1,000 documents involved in the case and the hearing was able to be run most efficiently and cost-effectively.

In short, the advantages of running a hearing by way of eTrial include:

1. The disclosure process was made far easier because it was not necessary to deliver bundles of hard copies of documents between the parties; the documents were simply exchanged on USB sticks;

2. There was a significant reduction in the amount of printing and photocopying;

3. During the trial, documents could be uploaded instantaneously to the eCourtbook;

4. While cross-examination of witnesses was being conducted, the parties (and the Judge) could see what the witnesses and counsel were referring to, down to the precise line or word in a particular document; and

5. Any document which referred to a second document was electronically linked to that second document (and so could be accessed by simply clicking on a hyperlink).

Creevey Russell are experienced litigators having been involved in the strategic preparation of document management plans which have been adopted for the purpose well-managed eTrials.

The cost of litigation can be prohibitive so ensuring that your legal representatives have the means and experience of efficiently and cost-effectively managing a trial is essential.

JAKOB MIGNONE ADMITTED AS A SOLICITOR

Jakob Mignone has made the transition from paralegal to solicitor following his recent admission as a legal practitioner to the Supreme Court of Queensland. Jakob is a highly valued member of our dispute resolution group, assisting clients with a wide variety of matters across our Toowoomba and Brisbane offices. Jakob is looking forward to continuing to work with our litigation and commercial divisions whilst continuing to develop strong relationships with new and existing clients.

YOUR LITIGATION TEAM