

FEDERAL COURT OF AUSTRALIA

Commissioner of Taxation v Rawson Finances Pty Ltd (No 3) [2016] FCA 1243

File number: NSD 1329 of 2014

Judge: **PERRY J**

Date of judgment: 17 October 2016

Catchwords:

Legislation: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*
Financial Transaction Reports Act 1988 (Cth)

Date of hearing: 17 October 2016

Registry: New South Wales

Division: General Division

National Practice Area: Taxation

Category: No Catchwords

Number of paragraphs: 10

Counsel for the Applicant: Mr M Richmond

Solicitor for the Applicant: MinterEllison

Solicitor for the Respondent: Mr C Ardagna of Brown Wright Stein Lawyers

ORDERS

NSD 1329 of 2014

BETWEEN: **COMMISSIONER OF TAXATION**
Applicant

AND: **RAWSON FINANCES PTY LTD**
Respondent

JUDGE: **PERRY J**

DATE OF ORDER: **17 OCTOBER 2016**

THE COURT ORDERS THAT:

1. The oral application made on 17 October 2016 for an adjournment of the interlocutory applications listed for hearing on 24 October 2016 be refused.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

(Revised from Transcript)

PERRY J:

- 1 By an oral application made this morning, the respondent, Rawson Finances Pty Ltd (**Rawson**), sought an adjournment of the hearing of the interlocutory applications for the provision of letters of request to take evidence from various witnesses in Israel. Those applications are made by the applicant, the Commissioner of Taxation (**Commissioner**), and are set down for hearing on Monday, 24 October 2016 for one day. The Commissioner has filed and served the evidence on which the Commissioner intends to rely in support of those applications together with written submissions. The respondent has not filed or served any evidence or submissions in compliance with the timetabling orders made on 23 August 2016, as varied on 12, 20 and 28 September 2016.
- 2 No evidence was led by Rawson in support of the application for an adjournment. The failure to do so was explained on the basis that the legal representatives for Rawson are currently unfunded and wished to avoid incurring costs. The basis on which the adjournment was sought was that Rawson had previously been funded in this litigation by the entity Ligon 158 Pty Ltd (**Ligon 158**), which is the only shareholder in Rawson. While Ligon 158 is the subject of freezing orders in separate proceedings (SAD 5 of 2015), these were varied so as to allow the payment to Rawson of its legal fees. It is said that Ligon 158 now lacks funds to be able to continue to pay Rawson's legal fees in the litigation and that its only liquid asset is a receivable from the companies and trusts that carry on a business known as the Nudie juice business (**Nudie entities**) which are also the subject of freezing orders in two sets of proceedings, SAD 5 of 2015 and NSD 1600 of 2015. The effect of the freezing orders in SAD 5 of 2015 and NSD 1600 of 2015, together with the liquidator's views in relation to the Nudie entities that Ligon 158 is not a debtor, are said to have prevented the flow of any funds to Ligon 158 from the Nudie entities.
- 3 Correspondence was relied upon by Rawson without objection which shows that, on 10 October 2016, the legal representatives for Rawson wrote to seek the Commissioner's consent to an extension of time for the filing of evidence and vacation of the hearing date on 24 October 2016, with the matter to be re-listed for hearing on a date convenient to the Court

not before 21 November 2016. The request in that letter was made upon grounds consistent with those put before the Court this morning in oral submissions.

4 The Commissioner responded to that correspondence by email dated 11 October 2016. In that letter the Commissioner stated that he was unable to consent to the request that the hearing of the interlocutory application be vacated in the absence of any evidence as to the financial position of both Rawson and Ligon 158 and the capacity of Rawson and Ligon 158 to pay the anticipated legal fees. Nor, the legal representatives for the Commissioner stated, had they been provided with any correspondence exchanged with the liquidators with respect to the variations made to the freezing orders.

5 At the hearing, the Commissioner opposed the adjournment and relied upon the affidavit of Mr Alvin Sujono sworn on 14 October 2016. That affidavit annexed evidence of reports provided by the Australian Transaction Reports and Analysis Centre (AUSTRAC) which oversees the administration, operation and compliance with the *Financial Transaction Reports Act 1988* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). Those reports indicated that between 13 May 2016 and 15 September 2016, Ligon 158 transferred an aggregate sum of A\$385,229 to Mr Andrew Binetter and/or the Caringbah trust.

6 The evidence also demonstrated that Mr Andrew Binetter was a director of the trustee of the Caringbah trust and also a beneficiary, and that the purpose for which the monies were transferred in each case was described as either for payment of director's fees from Ligon 158 and Erma Nominees Pty Ltd or for trade. I also note that the evidence showed that the Caringbah trust had the same address in America as Mr Andrew Binetter. Mr Andrew Binetter is also a director of Ligon 158, according to the ASIC extract which was annexed to Mr Sujono's affidavit.

7 In opposing the application for an adjournment, the Commissioner submitted first that there was an insufficient explanation given for the application for the adjournment, given the evidence that substantial amounts of money had been transferred out of Australia from Ligon 158 to Mr Andrew Binetter or the Caringbah trust, and that there was no evidence to explain why those moneys could not have been applied to payment of the legal fees necessary to resist the interlocutory applications.

- 8 Secondly, the Commissioner submitted that there was no reason why the application for the adjournment could not have been dealt with sooner than 10 October 2016 when the correspondence was exchanged between the parties to which I have referred, given that the timetabling orders were made on 23 August 2016 (as varied on 12, 20 and 28 September 2016).
- 9 Thirdly, the Commissioner submitted that an insufficient explanation had been given as to why an adjournment of four weeks, in effect, was sought and that it may ultimately be that further time might be required. Certainly, no evidential basis was given for the proposition that a four week period would provide a sufficient period for the funding issues said to affect Rawson to be resolved.
- 10 I accept the submission by Mr Ardagna (the legal representative of Rawson) that the four week period was proposed as a reasonable period within which Rawson could apply and have resolved any application to vary the freezing orders. I also accept his submission that the Commissioner has not pointed to any specific prejudice which an adjournment would afford. However, in the absence of any evidence of the funding difficulties which are said to affect Rawson's capacity to respond to the interlocutory applications, and in light of the evidence on which the Commissioner relies as to substantial sums of money leaving the country summarised earlier, I consider that no sufficient basis has been established for the grant of an adjournment of the interlocutory applications presently listed on 24 October 2016. In those circumstances, I will refuse the application for an adjournment.

I certify that the preceding ten (10) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Perry.



Associate:

Dated: 19 October 2016