

MASTER CLUB CONSULTANTS PTY LTD V STANBRITT PTY LTD & ANOR [2000]

Supreme Court of the ACT – 18 February 2000

FACTS

Master Club issued proceedings against Stanbritt alleging damages for an alleged repudiation of a management consultancy contract. This proceeding followed a similar proceeding that had been issued by a director of Master Club and discontinued with an order that the director pay costs to Stanbritt.

Stanbritt had only received half the costs owing by the director of Master Club and was concerned that Master Club would be unable to pay Stanbritt's costs if it successfully defended this proceeding. Stanbritt therefore issued an application for security of costs.

Master Club failed to provide any evidence to the Court about its financial position. Stanbritt were able to prove that Master Club had a share capital of \$12 and was not the registered owner of any property.

ISSUE

Should the Court make an order that security of costs against Master Club?

FINDING

The Court ordered that Master Club provide security for costs of \$30,000.00 within 21 days and that the proceeding be stayed until the security was provided.

QUOTE

Master Connolly said:

“The defendant applicant in this matter has established that the company has a very limited paid up capital and no identifiable assets.

It has established that a costs order in related litigation remains unpaid in full.

That is not sufficient evidence but does establish creditable grounds for suspicion. An affidavit stating that the company is in a position to meet debts as they arise would however effectively meet this evidence.

Where the company has chosen not to put any evidence, and has resisted disclosing any information relating to its financial affairs, it seems to me that the adverse inference can be drawn from this, together with the evidence positively adduced by the defendant applicant, is sufficient to satisfy me that there is reason to believe that the corporation would not be able to pay any costs order, and a sufficient basis is established for an order for security of costs.”

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IMPACT

While the applicant making an application for security of costs has the burden of proving that the Plaintiff may not be able to pay costs, the Plaintiff is obliged to provide evidence that that the Plaintiff may be unable to pay costs.

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