

Civil Case No. 14 of 2012

FREDERICK PITCHER

Plaintiff

V

1<sup>st</sup> Defendant

RONPHOS

and

2<sup>nd</sup> Defendant

NAURU REHABILITATION CORP

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JUDGE: Eames, C.J.  
DATE OF HEARING: 7 June 2012  
DATE OF JUDGMENT: 12 June 2012 (Ex Tempore)  
CASE MAY BE CITED AS: Pitcher v Ronphos and NRC  
MEDIUM NEUTRAL CITATION: [2012] NRSC 6

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CATCHWORDS:

Application for Interim Injunction - Lease over Plaintiff's land expired - Land previously used by now-defunct railway - Defendants using the land as a one-way road to transport phosphate and access communications towers - Plaintiff issues writ for damages for trespass - Interim injunction sought - Balance of convenience - Damages an adequate remedy.

APPEARANCES:

For the Plaintiff Mr. V Clodumar (Pleader)  
For the 1<sup>st</sup> Defendant Mr R Kun (Pleader)  
For the 2<sup>nd</sup> Defendant Ms L Lo Piccolo (Acting Secretary for Justice)

CHIEF JUSTICE:

- 1 The applicant seeks an interim injunction restraining Ronphos and the NRC from:  
"Trespassing over portion 141 in Buada District forthwith".
- 2 A large section of Portion 141 is leased to Ronphos but the present dispute concerns a section of the land that was used as a railway track and contained an access road. That land had been used by British Phosphate Corporation, under lease in the 1920s and 1930s, then by leases to the Nauru Phosphate Corporation. Finally, Ronphos Corporation was the lessee. The railway was used for the cartage of phosphate from the loading bridge and after the railway ceased to operate trucks used the route as a one-way route for delivery of phosphate. The area was known as land having Permanent Installations.
- 3 All leases over this land ceased on 31 March 2000. Since that date Ronphos and Nauru Rehabilitation Corporation have continued to use the land but without benefit of a lease and without rental payments being made to the plaintiff, the sole owner of the land.
- 4 The plaintiff issued proceedings claiming injunctive relief and damages for trespass. The plaintiff now seeks an interlocutory injunction.
- 5 By way of background, I was informed that other landowners over whose land the railway track ran have also sought redress against the defendants in recent years, and two groups of landowners asserted their rights under s.277 of the *Criminal Code* to use reasonable force, so as to prevent trespass or to remove trespassers. By blocking access to their lands those landowners had encouraged the defendants to enter negotiations and to sign new leases. The plaintiff had considered taking similar action but was warned by senior police that he risked arrest. He took this civil action instead. He obviously anticipates that if this injunction was granted he might similarly bring pressure on the defendants to negotiate a new lease.
- 6 I was informed that funds have been set aside by government to meet the rental

claims of all landowners of lands along the former railway track, but the plaintiff contends that promises have been made to that effect over ten years without a lease agreement eventuating.

7 Mason ACJ in *Castlemaine Tooheys Ltd v South Australia*<sup>1</sup> held:

“The principles governing the grant or refusal of interlocutory injunctions in private law litigation have been applied in public law cases, including constitutional cases, notwithstanding that different factors arise for consideration. In order to secure such an injunction the plaintiff must show (1) that there is a serious question to be tried or that the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief; (2) that he will suffer irreparable injury for which damages will not be an adequate compensation unless an injunction is granted; and (3) that the balance of convenience favours the grant of an injunction”.

8 In this case, Mr Clodumar submitted that there is a serious issue to be tried and that was not seriously contested. Prima facie there has been a continuing trespass: see *Grund Detabene v Ronphos and Anor.*<sup>2</sup>

9 Mr Kun submitted that the balance of convenience favoured refusing the injunction. The plaintiff does not live on or use this area of land, whereas it served a significant community need. The road allows one-way travel by trucks and considerably shortens their journey, not only to mining facilities but also to communications towers, which also serve the community. These access roads are to the benefit of the community. Additional wear and tear on vehicles would result, funds thereby being lost, if alternative routes had to be used. The defendants are corporations acting on behalf of the community, not for private profit, he submitted.

10 Mr Clodumar submitted that the plaintiff’s legitimate concerns have been ignored for ten years and without an injunction will continue to be ignored. Implicit in his submissions was the suggestion that if the plaintiff were forced to use his rights under s.277 (not that he threatened to do so) it would be likely to cause some community upheaval, which would be avoided if the injunction was granted in

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<sup>1</sup> (1986) 67 ALR 553, at 557

<sup>2</sup> [2011] NRSC 8 at [42].

appropriate terms.

- 11 Were I to grant an injunction, I indicated to the parties that I would do so only on terms that the plaintiff gave the usual undertaking as to damages<sup>3</sup>. That however will not arise, given the conclusion I have reached.
- 12 Ms Lo Piccolo for the NRC submitted that the critical factor here is the consideration that damages will provide an adequate remedy for the plaintiff should his trespass claim succeed. There is no need for an injunction. That is a very important consideration: see *American Cyanamid Corp v Ethicon Ltd*<sup>4</sup>: in this case, a decisive consideration.
- 13 In my opinion, there is not any real need to disturb the status quo. Damages will be an adequate remedy for the plaintiff, and as to the balance of convenience, it falls heavily on the side of refusal of the application.
- 14 The application for an interim injunction is refused.
- 15 I will hear the parties as to appropriate orders, and give directions as to the further disposition of this case.

Geoffrey M Eames AM QC

Chief Justice

12 June 2012

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<sup>3</sup> “The plaintiff by his counsel undertakes to the court that he will abide by any order which the court may make as to damages, should the court determine that the defendant has suffered any damage by reason of this order which the plaintiff ought to pay”: see *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386; See “Civil Procedure”, Eds Colbran, et al, 4th Ed, Lexis Nexis, 15.2.10.

<sup>4</sup> [1975] AC 396 at 407-408, per Lord Diplock.