FEDERAL COURT OF AUSTRALIA

Comandate Marine Corp v Pan Australia Shipping Pty Ltd

[2006] FCA 1246

PRACTICE AND PROCEDURE - stay of proceedings – application for leave to appeal against decisions granting anti-anti-suit injunction and finding foreign arbitral proceedings abandoned – conditions on grant of leave to appeal - whether Court should impose a condition requiring the discharge of restraining orders granted by foreign courts in support of foreign arbitral proceedings

Held – leave to appeal granted upon condition that applicant take steps to discharge two restraining orders; application for stay of orders pending outcome of appeal refused

International Arbitration Act 1974 (Cth)

Batistatos v Roads and Traffic Authority of New South Wales (2006) 227 ALR 425 applied
Tringali v Stewardson Stubbs & Collett Pty Limited (1966) 66 SR NSW 335 applied
Walton v Gardiner (1993) 177 CLR 378 applied

COMANDATE MARINE CORP v PAN AUSTRALIA SHIPPING PTY LTD
NSD 1613 OF 2006

PAN AUSTRALIA SHIPPING PTY LTD v COMANDATE MARINE CORP
NSD 1130 OF 2006

RARES J
1 SEPTEMBER 2006
SYDNEY

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY **NSD 1613 OF 2006**

BETWEEN: **COMANDATE MARINE CORP**
Applicant

AND: **PAN AUSTRALIA SHIPPING PTY LTD**
Respondent

JUDGE: **RARES J**

DATE OF ORDER: **1 SEPTEMBER 2006**
AS VARIED ON 5 AND 6 SEPTEMBER 2006

WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. Leave to Appeal is granted to the applicant pursuant to s 24(1A) of the *Federal Court of Australia Act 1976* (Cth) from the orders of Rares J made on 22 June 2006, 13 July 2006 and 22 August 2006 upon the following conditions including the satisfaction of the conditions in par (c) on or before 8 September 2006:

   (a) that the applicant provides security for the respondent's costs of both these proceedings and the proceedings brought by the applicant against "*Boomerang 1*" (FCA No. NSD 1223 of 2006 and HCA No. S213 of 2006) in the sum of A$190,000.00, such sum to be paid into Court (this amount includes an earlier amount of agreed security in the proceedings against "*Boomerang 1*");

   (b) that until a final order of the Full Court of the Federal Court of Australia setting aside the orders of Rares J made on 22 August 2006 or until further order the applicant is restrained from taking any step in the London Arbitration commenced on 14 June 2006;

   (c) Upon the respondent, by its Counsel giving to the Court the usual undertaking as to damages and on the respondent's undertaking to do all things reasonably necessary on its part to be done to assist in the Applicant obtaining the discharge of and, if necessary, to consent to the reinstatement of the orders referred to in the orders in (i) and (ii) below in the event that the applicant's

appeal succeeds in relation to the election in relation to, and abandonment of, the arbitration agreement, that the applicant on or before 8 September 2006 take all necessary steps to discharge:

(i) the Worldwide Freezing Injunction granted by Mr Justice Colman on 28 July 2006 with costs in proceedings number 2006 folio 756 before Mr Justice Colman to be reserved; and

(ii) the Process of Maritime Attachment and Garnishment issued by Justice Crotty on 16 June 2006.

2. Costs of the application for leave be costs in the appeal.

3. Liberty to apply on 24 hours notice.

4. The applicant's application for a stay of the orders made on 13 July 2006 and 22 August 2006 be refused.

5. If a notice of appeal is filed on or before 8 September 2006 pursuant to the leave granted in order 1, the conditions referred to in paragraphs 1(a), (b) and (c) of order 1 will become, upon such filing, orders of the Court until further order, but will otherwise be of no force or effect.

6. Upon the undertaking of the solicitor for the applicant to pay the filing fee due, grant leave to file in court the Notice of Appeal.

AND THE COURT NOTES:

7. The facsimile from Royal Bank of Scotland dated 30 August 2006 confirming remittance of US$145,000.00 (equivalent to A$190,000.00) to the Norton White Commercial Trust Account, a copy of which is attached to these orders; and

8. The undertaking of the solicitor for the applicant to pay the amount of A$190,000.00 into Court upon receipt (which the Court notes has now been paid).

9. The undertaking of the respondent to the Court, by its Solicitors and Counsel, to provide security for the applicant's costs on an indemnity basis for all steps necessary for the discharge and reinstatement of the orders referred to in 1(c) in an amount to be agreed or determined by order of this Court, such sum to be paid into Court.

10. The undertaking of the respondent as referred to in order 1(c) above is without prejudice to its rights to contend, following the reinstatement of the orders referred to

in 1(c) above, that those orders should be discharged on any available basis and without prejudice to the respondent's right to contend, if so advised, that it has suffered damage as a result of the Worldwide freezing injunction referred to in order 1(c) and to seek damages in that respect following the outcome of the appeal.

11. The parties agree that the sums paid into court in accordance with orders 1(a) and 1(c) as security for costs be deposited into an interest bearing account and for administration purposes only, be allocated to proceeding NSD 1613 of 2006.

THE COURT FURTHER ORDERS THAT:

12. The applicant be granted leave to file in court the affidavits of Robert Reginald Wilson sworn 29 August 2006 and 1 September 2006.

13. The applicant be granted leave to file in Court the Amended Notice of Motion dated 1 September 2006.

14. The Amended Notice of Motion filed in Court today be made returnable instanter but reserve the right of Pan Australia Shipping Pty Ltd to apply for an adjournment of the hearing of the Amended Motion in respect of the Applicant's request for a stay in the event that there is some identified prejudice to it being able to proceed today.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY **NSD 1130 OF 2006**

BETWEEN:	**PAN AUSTRALIA SHIPPING PTY LTD** **Plaintiff**
AND:	**COMANDATE MARINE CORP** **Defendant**

JUDGE:	**RARES J**
DATE OF ORDER:	**1 SEPTEMBER 2006**
WHERE MADE:	**SYDNEY**

THE COURT ORDERS THAT:

1. The name of the defendant be changed to Comandate Marine Corp.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY **NSD 1613 OF 2006**

BETWEEN:	**COMANDATE MARINE CORP** **Applicant**
AND:	**PAN AUSTRALIA SHIPPING PTY LTD** **Respondent**

NSD 1130 OF 2006

BETWEEN:	**PAN AUSTRALIA SHIPPING PTY LTD** **Plaintiff**
AND:	**COMANDATE MARINE CORP** **Defendant**

JUDGE:	**RARES J**
DATE:	**1 SEPTEMBER 2006**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

(REVISED FROM THE TRANSCRIPT)

1 Comandate Marine Corporation has applied pursuant to s 24(1A) of the *Federal Court of Australia Act 1976* (Cth) for leave to appeal from my orders made on 22 August 2006 and, consequently, upon the order I made continuing an anti-anti-suit injunction on 13 July 2006 which I left undisturbed in giving my decision on 22 August 2006. The parties have agreed, in effect, with one significant exception, a regime under which leave to appeal should be given. The Court has put in place the mechanism for an urgent hearing of the appeal in the event that leave is granted, so that it is likely to be heard before the end of October 2006 on dates convenient to the parties and their counsel.

2 The one issue on which the parties are not agreed is whether there should be a condition imposed on the grant of leave to appeal which has the effect of requiring Comandate Marine to obtain the discharge of two orders made by courts in the United States of America and in England. Pan has proposed that, in order to obtain the discharge of those two sets of orders, it should provide security for Comandate Marine's costs of obtaining the

discharge of the orders and their reinstatement without opposition, subject to Pan's right to apply once the status quo is restored to the respective courts for the discharge of the orders on any proper ground.

BACKGROUND

3 The first order was an order made by Judge Crotty of the United States District Court, Southern District of New York, on 16 June 2006 which operated as an attachment against all of Pan's property including any moneys that were electronically transferred to or by Pan and another company called Austral Asian Maritime Group Pty Ltd, about which there is no evidence before me, to an amount of USD 4,200,000 plus interest and costs.

4 On 22 June 2006, I granted Pan an anti-anti-suit injunction for reasons which I then gave. Subsequently, Comandate Marine moved to refer the proceedings to arbitration and I heard that application on 13 and 14 July 2006 and gave judgment on 22 August 2006. After I had reserved judgment in that application, Comandate Marine obtained, ex parte, the second order from Colman J in the High Court of Justice, Queens Bench Division, Commercial Court in London on 27 July 2006 which had the effect of operating as a Mareva order over all of Pan's assets and operations worldwide. The order prohibited Pan from removing from England and Wales any of its assets up to the value of USD 4.5 million and from disposing of or dealing with its assets anywhere in the world if its unencumbered assets in the United Kingdom did not exceed that sum. There were exceptions to Colman J's order to the effect that it did not prohibit Pan from spending a reasonable sum on legal advice and representation in proceedings, including the proceedings from which leave to appeal is sought, but the exception operated generally.

5 On 29 August 2006, after the application for leave to appeal had been filed, the English solicitors acting for Comandate Marine wrote to their English counterparts taking a stance that the Tribunal in the London arbitration had quite rightly, so they said, confirmed that it was not required to have regard to the Australian proceedings, being my judgment, which held that those proceedings were not operative and that Comandate Marine had no obligation whatsoever to discontinue the London arbitration. The letter went on to say:

> *'Your clients on the other hand have an obligation to comply with the terms of the freezing injunction of Coleman J* [sic] *which they persist in ignoring and/or attempting to circumvent.'*

6 Subsequently, Comandate Marine has accepted that, for the purposes of securing a grant of leave, it should submit to an order that it take no further steps in the London arbitration until the final determination of the appeal. However, it continues to insist upon its right to have the attachment order in the United States and the freezing and the Mareva type orders in England enforced.

ARGUMENT

7 Comandate Marine submits that it is not a proper exercise of the discretion to impose conditions on a grant of leave to appeal to require it to submit to terms that it seek to discharge the two foreign orders. Alternatively, on its application for a stay of proceedings, it says that it should not be required to submit to such a condition and that it is inappropriate for the Court to require it to do so. Comandate Marine argued that by imposing a condition that had the effect of requiring it to obtain the discharge of the restraining orders, part of the subject matter of the appeal it seeks to bring would be destroyed. However, it pointed to no evidence, apart from the terms of the orders themselves and the inference that it says I should draw from the making of the ex parte order by Colman J, that he had sufficient evidence that there was a risk of dissipation of assets by Pan to warrant the grant of the order, that it will suffer material prejudice were I to impose the condition.

8 Comandate Marine also argues that I would be interfering with the jurisdiction of the two courts in the United States and England were I to impose the condition. It says that it would be prejudiced by losing the benefit of those orders were the condition imposed in circumstances where, if my judgment be reversed on appeal, it will have lost the benefit of the orders for the period in which they are vacated. At one point it was suggested that by imposing the conditions the appeal would be stultified because Comandate Marine would be required to give up a valuable right to those orders. I cannot see how that could be so, because the right which would be vindicated in the appeal would be to have, if I am wrong, the arbitration held and the consequential relief that could be granted by not only the arbitrators but other courts in aid of the arbitration would be available to Comandate Marine in that event.

9 Comandate Marine argued that I would be going beyond the preservation of the subject matter of the appeal if I were to exercise a discretion to impose the contested condition.

LEAVE TO APPEAL

10 The principles that govern the grant of leave to appeal are well established. An applicant for leave must establish that the decision in question is attended with sufficient doubt to warrant the grant of leave and he, she or it must also show that substantial injustice will result from a refusal of leave to appeal: *Bienstein v Bienstein* (2003) 195 ALR 225 at 231 [29] per McHugh, Kirby and Callinan JJ.

11 As I have said, in this case, the parties are agreed and I am satisfied that the normal basis for which leave to appeal ought be granted has been met by Comandate Marine in the sense that the matters which it wishes to agitate, were leave granted to appeal from my decision, are not the subject of any appellant authority directly on the point in Australia, and, so far as the question of whether there was an agreement in writing for the purposes of the *International Arbitration Act 1974* (Cth) and in the New York Convention, in common law courts on the point on which I was asked to rule. It is clear that if I am wrong and leave is not granted, there would be a substantial injustice to Comandate Marine in the sense that it would have lost the benefit of an immediate arbitration which it had already commenced at the time the motion before me was brought, but it will then have been subjected to a full hearing in this Court of matters which were properly the subject of the arbitration agreement.

ARGUMENT ON CONDITIONS

12 So in that sense, it is common ground between the parties, and commonsense in my view, that the principles that govern the grant of leave in the ordinary case have been satisfied. But, because the application for leave to appeal is against an interlocutory decision, albeit having in practical terms final characteristics, the Court retains a discretion as to how to preserve and balance the respective rights of the parties in the proceedings. In effect, Comandate Marine wishes not only to have its proceedings on appeal brought on and heard urgently, and is prepared to submit to an order that it take no further steps in the arbitration, but it wishes to keep the benefit of orders that it has sought and obtained from the United States and English courts that are solely intended to benefit it in the arbitration.

13 On 28 August 2006, Norton White, Comandate Marine's Australian solicitors wrote to Ebsworth & Ebsworth, Pan's Australian solicitors, saying that the English freezing order and the United States attachment order were both obtained 'in support of the London arbitration'.

14 When the matter returned to Court this morning, there was debate over whether or not the contested condition should be imposed. The matter was stood down until this afternoon and, at that time, Comandate Marine applied to have, in the alternative to, or in supplementation of, its application for leave to appeal, a stay of my order, in effect dismissing its application for relief under the *International Arbitration Act 1974* (Cth) staying the proceedings that Pan had brought. I have been taken to no evidence in the application today, although I invited Comandate Marine's counsel to do so, which suggests that Comandate Marine would not suffer any prejudice of a tangible nature, other than the loss of the benefit of the two sets of orders by the United States and English courts. Comandate Marine did not suggest, nor did Pan, that either order had been engaged to benefit Comandate Marine at the present time by obtaining or affecting assets of Pan's as security.

15 Comandate Marine asked me to infer that the mere making of the order by Colman J showed that there was some risk that Pan would dissipate its assets so as not to have them available to meet any arbitration award were the arbitration allowed to proceed. There is, however, no evidence whatever before me, that apart from the inference I am asked to make apart, Pan would dissipate its assets. Were that position one which in the future became a reality, no doubt this court could take steps to protect the position. I do not think that any order I make today should foreclose to Comandate Marine the right to establish that its position should be protected in this Court if there were a proper basis for doing so.

16 However, Comandate Marine has moved for its stay today instanter on the evidence it has chosen to put before me. It made a forensic choice in doing that not to lead evidence of any actual prejudice it would suffer, that is to say that Pan is currently in a position where its assets may be dissipated but is restrained from doing so by the existence of the freezing order of Colman J. What Comandate Marine is really seeking to do is to preserve the benefit of its having an arbitration on foot in which it obtained the orders from the overseas courts while appealing against my order which has the effect of saying that the basis upon which those orders were sought was no longer in existence. Whether it was ever in existence at the time the proceedings were started in the England may be a debatable point. Clearly, the right to seek the order in the United States court was in existence at that time the order was obtained. That occurred a week before Comandate Marine began the proceedings to arrest the *Boomerang 1*.

PRINCIPLES FOR IMPOSING CONDITIONS

17 In granting interlocutory relief, including leave to appeal against an order, the grant of a stay or, in a practical sense, where the effect of the order sought would be to stay some part or all of the order under appeal, the Court must balance the respective rights of the parties as best it can. Because the appeal should be allowed to be instituted, each side will be in a position of some uncertainty as to the precise legal rights that they have, notwithstanding that there has been some, albeit still then contested, judicial determination along the way.

18 I am of opinion that there is the power in the Court to impose conditions on a grant of leave to appeal in circumstances where, like the present, the appeal is interlocutory but there are other proceedings on foot, the benefit of which the unsuccessful party seeks to maintain while at the same time seeking to challenge the result which would have the effect of negating the factual substratum underlying those other proceedings. Such a power seems to me to fall within the inherent power of a superior court of record to condition orders that it makes inter partes to accord with the requirements of the demands of justice, just as the power to grant a stay is not confined to closed categories of cases of which vexatious suits is one illustration. It is a power which is exercisable in any situation where the requirements of justice demand it: *Tringali v Stewardson Stubbs & Collett Pty Limited* (1966) 66 SR NSW 335 at 344. The power to impose conditions should be similarly approached.

19 In *Walton v Gardiner* (1993) 177 CLR 378 at 393 Mason CJ and Deane and Dawson JJ discussed the inherent jurisdiction of a superior court to stay proceedings on the grounds of abuse of process and said that that power extended to all those categories of cases in which the processes and procedures of the court which exist to administer justice with fairness and impartiality may be converted into instruments of injustice or unfairness. They relied on what Lord Diplock had said in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 at 536, that the inherent power which any court of justice must possess is to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it or would otherwise bring the administration of justice into disrepute among right-thinking people.

20 A similar view as to the power of a stay was expressed in applying what Lord Diplock had said by Gleeson CJ, Gummow, Hayne and Crennan JJ in *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 227 ALR 425 at 428 [7]-[9].

DECISION

21 I am of opinion that the continuation of the foreign restraining orders would reflect a juridicial basis which is inconsistent with the position that I have found, and would create an alteration of the position that the arbitration agreement is inoperative. I am of opinion that in crafting orders, conditioning the grant of leave so as to obviate the necessity for Pan to litigate both in the United States and England to set those restraining orders aside and to provide that they can, in effect, be automatically reinstated, will mean that the institution of the appeal will not be able to be seen as being unduly vexatious or oppressive, within the meaning of the authorities to which I have referred.

22 Right-thinking people would regard it as very odd that the appellate processes of the court could be invoked by one party who says a decision is wrong, which held it had no right to arbitrate, who on the other hand, asserts that it can keep in place ex parte orders obtained in aid of that arbitration from courts overseas. It does not seem right that Comandate Marine can pursue an appeal in this jurisdiction leaving Pan to pursue litigation overseas to secure the benefit of its result here, in circumstances where one is dealing with commercial litigation. In the present case appropriate protective orders can be made and there is no evidence before, me despite an invitation to identify any, to show that there is any prejudice to Comandate Marine in this result.

23 Doing the best I can to balance the rights of both of the parties, I am of opinion that it is appropriate to impose a condition on the grant of leave that Comandate Marine give up its current orders in aid of the arbitration. It seems to me that those orders currently, other than requiring Pan not to dissipate its assets otherwise than in the ordinary course of business which it is obliged to do under Australian law in any event, on the evidence before me, do not actually secure any real right of Comandate Marine or give it a benefit. So, I do not consider that it will suffer some substantial prejudice by being required to adhere to the position that there is no arbitration currently on foot by reason of the determination that I made on 22 August 2006.

24 This is an application to commence an appeal in commercial litigation which ought be approached commercially in the exercise of discretions attending a grant of leave. I am of opinion that where the court is in a position to give an urgent hearing of the appeal, as will occur, and where there is no practical prejudice, on the evidence, suffered by the vacation of the two orders that have been obtained only for the purposes of the arbitration, I ought to

require Comandate Marine to take steps to discharge them. Comandate Marine argued that that was interfering with the jurisdiction of the United States District Court and the High Court of Justice of England and Wales.

25 That is not a correct analysis of the position. Comandate Marine is a party to the proceedings. It is the person applying to the court for relief. The court acts in personam. No order I make has the effect of doing anything to affect the orders made by either the United States District Court for the Southern District of New York or the Queens Bench Division, Commercial Court. The orders that I would make would be orders affecting Comandate Marine as a party to proceedings before this court and in the protection of the processes of this Court and the rights of the parties before me.

26 One potential consequence of refusing leave to appeal in weighing the prejudice that Comandate Marine might suffer, is that it would lose the benefit of the arbitration were it entitled to proceed. The detriment to Pan, if leave is granted, is that if these two restraining orders are kept on foot, it loses any fruit of its victory so far as that is concerned and becomes subject to a regime not in the control of this court about the way it deals with its assets for an arbitration process that this Court has said does not exist. If Pan is obliged to give security to put Comandate Marine in funds to obtain first the discharge and later the restoration of those orders, in the event that the appeal is allowed, any injustice to Comandate Marine on a practical level will be undone because it will then be able to regain orders that it can enforce in the future. As far as I can understand, from the evidence before me and from the evidence to which I was taken and specifically invited counsel for Comandate Marine to take me to, those restraining orders are not being positively enforced to the benefit of Comandate Marine, except to the extent that they operate as a general restraint on Pan in the way it might otherwise conduct itself.

27 I do not see that that general restraint, namely that it should not dissipate its assets otherwise than in the ordinary course of business, is anything different to the obligations it would have under Australian law and I see no evidence before me to suggest that it is acting otherwise than in the ordinary course of business.

28 Doing the best I can to balance the respective detriments of each party, as necessarily must occur where some interlocutory regime should be put in place pending the hearing of an appeal, I think it is appropriate to make a conditional grant of leave requiring Comandate

Marine to take steps to discharge the two restraining orders.

DRAFT ORDERS

29 I therefore would propose to make orders along the lines suggested in the draft orders prepared by Pan, but I will hear the parties on the form of those orders in light of the decision to which I have come.

(COUNSEL ADDRESSED)

30 Comandate Marine has also applied for a stay of my orders made on 13 July 2006 continuing the anti-anti-suit injunction and on 22 August 2006 dismissing its motion for a stay in reference to arbitration.

31 I am of opinion that the grant of leave on the conditions on which I propose to make it is an appropriate means of protecting Comandate Marine's interests and a stay of the orders would not be appropriate. There is no evidence of any injustice to Comandate Marine and there is clear evidence of injustice that would be done to Pan were I to grant such a stay.

32 The effect of the stay would mean that Comandate Marine would be free to take proceedings in England which would have the effect of stultifying the very relief I granted by the anti-anti-suit injunction on 22 June 2006. I can see no legitimate basis upon which I could accede to the application to stay that order. And, the application to stay an order dismissing the notice of motion seems to me to be an exercise in futility. The only relief that was obtained was a refusal to do something. I do not see any purpose in staying such an order.

33 As to the costs that might be sought, in the event that there is some issue that requires those costs orders to be stayed, as I understand it, the practice of the court is not to allow them to be taxed until the finalisation of the proceedings. Comandate Marine can make an application in due course to stay those orders pending the hearing of other matters, if it needs to, but I understand the ordinary operation of the rules to mean that those orders cannot be enforced until the final determination of the proceedings. I therefore refuse the application for a stay.

(COUNSEL FURTHER ADDRESSED)

34 The orders I make are those contained in the short minutes of order as amended initialled by me, dated today and placed with the papers. I will not make any order for costs

beyond the order in paragraph 2.

STAY APPLICATION

35 Comandate Marine asks that I stay the orders I have just pronounced pending its making an application for special leave to appeal to the High Court of Australia. I am of opinion that it is not in the interests of justice that I do so. If Comandate Marine wishes to pursue an application for special leave it can move in the High Court and seek such relief as the court may think appropriate in the period before the order for the grant of leave expires.

36 In my opinion it would render nugatory the processes of this Court in providing an expeditious hearing of the appeal were I to accede to the order sought by Comandate Marine, the more so because I made clear and counsel for Comandate Marine clearly understood that I was being asked in this motion to exercise the appellate jurisdiction as a single judge rather than have a bench of three members of the court deal with the application.

37 In those circumstances it seems to me that the orderly administration of the processes of the court and the interests of the parties to have the proceedings conducted in an efficient, just and appropriate way would be unduly interfered with by the grant of a stay. In my opinion there is no irreparable prejudice that would be averted on the evidence before me were any stay to be granted. For those reasons I refuse the application.

I certify that the preceding thirty-seven (37) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rares.

Associate:

Dated: 19 September 2006

Counsel for the Applicant: Mr AW Street SC with Mr N Owens

Solicitors for the Applicant: Norton White

Counsel for the Respondent:	Dr A Bell
Solicitors for the Respondent:	Ebsworth & Ebsworth
Date of Hearing:	1 September 2006
Date of Judgment:	1 September 2006