

FAMILY LAW PRACTICE AND PROCEDURE Adjournment and case management FAMILY LAW COSTS Application for costs by the intervenor dismissed Family Law Act 1975 (Cth) APPLICANT: Mr Grattan RESPONDENT: Ms Grattan INTERVENOR: B Pty Ltd FILE NUMBER: MLC 4259 of 2013 DATE DELIVERED: 3 October 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Cronin J HEARING DATE: 29 September; 3 October 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Ackman QC with Mr Werner SOLICITOR FOR THE APPLICANT: Taussig Cherrie Fildes COUNSEL FOR THE RESPONDENT: Mr Glick with Mr Strum SOLICITOR FOR THE RESPONDENT: Kainelaw Australian Lawyers COUNSEL FOR THE INTERVENOR: Ms Ben-Simon SOLICITOR FOR THE INTERVENOR: C Law Firm ORDERS That BY CONSENT there be orders in accordance with the minutes of proposed orders marked Exhibit A sealed and attached hereto AND IT IS DIRECTED that such minutes remain upon the Court file. That the solicitor for the wife engross the minutes and deliver them by electronic transmission to my Associate within 7 days. That the material produced under subpoena not the subject of objection is to be released for inspection and copying. That the material in the sealed envelope produced by C Law Firm which is the subject of objection on the grounds of privilege be made available for examination by the Honourable Justice Cronin for the purposes of determination as to privilege. That the application for costs by B Pty Ltd is dismissed. ALL APPLICATIONS ARE ADJOURNED AND FIXED FOR FINAL HEARING before the Honourable Justice Cronin at 10.00am on 9 December 2014 as a five day matter. The evidence in chief of all witnesses shall be given by affidavit. TIMETABLE: By 4 pm on 20 October 2014 the applicant file and serve upon all other parties: a amended application setting out with precision the orders to be sought; all affidavits of evidence to be relied upon; and a financial statement. The applicant pay all required court fees by 4 pm on 20 October 2014 By 4 pm on 10 November 2014 the respondent file and serve upon all other parties: a amended response setting out with precision the orders to be sought; all affidavits of evidence to be relied upon; and a financial statement. By 4 pm on 24 November 2014 the applicant file and serve any affidavit in reply. Without leave of the Court, any affidavit filed beyond the timetable set out in these orders may not be relied upon. SUBPOENA E

All parties have leave to issue subpoenas for the production of documents. If a party is represented by a legal practitioner, the registrar shall, upon the certification of the legal practitioner, be satisfied as to relevance. CASE MANAGEMENT The registrar may vary the filing timetable under these orders. If a party fails to comply with these orders, a party who has complied may file an application in a case supported by an affidavit seeking to proceed on an undefended basis. Any rulings required on objections to evidence shall be set out in the case outline. By 4 pm on 5 December 2014 all parties file electronically to ... a case outline in one document setting out: a concise set of orders to be sought; the list of the affidavits to be read; the list of objections to evidence requiring a ruling; the outline of the issues in dispute; and a list of assets and liabilities. COSTS At the commencement of the hearing, each party shall provide the court with a statement setting out their costs incurred to that date, the source of any payments made and what costs are expected until the completion of the hearing. That Ms D be the first witness in the proceedings that commence on 9 December 2014. That the interim applications of all parties be otherwise dismissed. AND THE PARTIES SHOULD NOTE: Upon non-compliance with the timetable under these orders or any amendments made by the registrar, the Court may relist the case for case management purposes requiring the parties to justify why it should not be removed from the trial list. Affidavits relied upon for previous hearings cannot be relied upon as evidence in chief without leave of the Court. IT IS NOTED that publication of this judgment by this Court under the pseudonym Grattan & Grattan and Anor (No. 4) has been approved by the Chief Justice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER: MLC 4259 of 2013 Mr Grattan Applicant And Ms Grattan Respondent And B Pty Ltd Intervener REASONS FOR JUDGMENT These reasons concern two matters. The first relates to the withdrawal of caveats. The jurisdiction to order a party who had filed a caveat to remove it was not in contention. Senior counsel for the wife sought that the caveat remain on the basis that removing it would be of no utility in circumstances where there is a hearing in a few weeks time. The fundamental and underlying principle in which the wife supports the caveat (leaving aside any argument about there being a caveatable interest) was her view that the husband could not be trusted because of various transactions which she has asserted were in breach of court

orders. It is not necessary for me to make any finding about any of those issues today. Senior counsel for the husband pointed to the existence of an order made on 14 August 2014 (paragraph 3) which related to the caveat being removed if the husband provided documentations in respect of a sale. At the conclusion of the hearing, it was indicated that a valuation had been obtained only at that moment and it was substantially less than what the parties were anticipating. In my view, having carefully considered the order made on 14 August 2014 which I note was drawn by the parties, there is no basis for me to make any other order at this stage because any conceivable situation is covered by those orders. The second matter relates to an application for costs by B Pty Ltd. I delivered reasons on this day indicating that I would not remove Mr C and his firm of solicitors from acting for B Pty Ltd. I do not propose to repeat those reasons but as I indicated in discussion, it was a very close call. The wife lost her application on the basis that she had slept on her rights but it must also be said that her application related to the husband and Mr C which problem evaporated when the husband gave an undertaking that he would not consult Mr C for advice or give instructions in relation to the family law proceedings between the husband and the wife. Section 117 of the Family Law Act 1975 (Cth) (the Act) provides that in proceedings under the Act each party shall bear their own costs unless there are circumstances that justify a departure from that principle. If such a circumstance can be shown, the Court must not make an order for costs unless it is satisfied that the matters set out in s 117(2A) result in a just result for the parties. In my view, this was an application that was keenly contested and was inextricably bound up with the association between the husband and Mr C. It was also about actions by Mr C which caused the wife concern as to his objectivity and whether there was a potential conflict with his duty to the Court and his fiduciary duty to the wife. This was the exercise of a discretion in favour of the company and in my view there is nothing unusual about that such as would enable me to find that there were justifiable circumstances to make an order at all. In those circumstances, the application for costs by B Pty Ltd must be dismissed. I certify that the preceding Six (6) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Cronin delivered on 3 October 2014. Associate: Date: 3 October 2014 AustLII: Copyright

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