29/92

SUPREME COURT OF VICTORIA

MURPHY and ANOR v YOLANDA NOMINEES PTY LTD

Nathan J

13 March 1992

CIVIL PROCEEDINGS – COSTS ORDERED ON AN ADJOURNMENT – MATTER LATER SETTLED – ORDER MADE BY CONSENT – "IN FULL AND FINAL SETTLEMENT" – PREVIOUS COSTS ORDER OVERLOOKED – WHETHER EMBRACED BY CONSENT ORDER.

Where parties to a civil proceeding consented to the making of an order "in full and final settlement", this meant that all of the issues then outstanding between the parties were finally and completely despatched and the order encompassed any prior court orders (such as an order for costs upon an adjournment).

NATHAN J: [1] In 1989, Sue Murphy and Mein Hua Chen instituted proceedings against Yolanda Nominees for damages arising out of an alleged breach of contract. On 5 July 1990, the proceedings were adjourned because Yolanda was not ready to proceed. The magistrate ordered that Yolanda pay to Sue Murphy the sum of $700 costs.

The litigation proceeded in uncommonly acrimonious mode until it came on for hearing on 30 January 1991 and negotiations between the parties were then entered into. Those negotiations resulted in a Consent Order being made by a magistrate in the following terms:

> "Defendant, that is, Yolanda pay to the plaintiff the sum of $4,500 in full and final settlement. Secondly, a stay of 30 days".

Subsequently, the solicitors for Sue Murphy and her friend wrote to Yolanda requesting payment of the $4,500 and it was duly forwarded to them. After that day, Sue Murphy and her friend again wrote to Yolanda requesting the payment of the $700 costs ordered in July 1990. That claim was resisted. Enforcement proceedings were instituted and ultimately, Yolanda responded by seeking a declaration before a magistrate that Sue Murphy and her friend were disentitled to the $700. It was asserted the settlement of January superseded the previous court order. The magistrate acceded to those submissions and it is from his decision that an appeal has now come before me.

In my view, the magistrate was correct but for slightly different reasons than those he pronounced. In my view, I have before me an issue of construction of a Court Order, namely, the meaning to be given to the words "full and final settlement" (and I might add by necessary parenthesis the words 'of the claim').

[2] In my view, the conjunction "and" is operative and to be given full force and effect. The word is "full" which in my view means "complete" or "total". "Final" means "together with", or "in addition to" the "completeness" covered by the word "full". "Final" carries with it the notion of a conclusion, a bringing to an end of the litigation between the parties. When the question is asked, "What is the settlement in 'full and final settlement' of?", the answer must be given, "Of the claim and all litigious issues which have previously arisen between the parties". It supersedes any outstanding Court Orders already pronounced. The parties can be presumed, in their negotiating process, to have had the entire range of issues in dispute before them. Accordingly, in that context, a settlement when ultimately pronounced to be in "full and final settlement", must be assumed, in my view as a matter of compelling logic, to it be the final and complete despatch of all the issues then outstanding. It necessarily encompasses and embraces prior Court Orders in whichever direction they may have been pronounced.

In this case, it is apparent that both parties forgot about the previous cost order. So much

has, in fact, been conceded by Mr Derham, counsel for Sue Murphy and her friend, who argued with his common tenacity that the cost order being a Court Order stood as a discrete matter and was not superseded by encompassed by the subsequent settlement order. As I have already said, I reject that contention. Similarly, were I to interpret that Consent Order as a matter of contract, and there is some authority for that **[3]** proposition, I would nevertheless come to the same view. The contract between the parties finally arrived at must be interpreted objectively. What would the ordinary bystander say of a settlement of a claim which recited the terms "full and final". It is a commonplace to say there could not be more absolute terms; it would be difficult to conceive of English words less equivocal than "full and final". In my view, it is not open to one of the parties to a contract to appear after its conclusion and say, 'I forgot about this', or 'I didn't give enough weight to that', or, as has been pronounced by the High Court, it is not open to a party to say, 'I really didn't intend to enter into contractual arrangements because I had this secret reservation in my mind at the time'. The subjective view of the parties is not persuasive.

Therefore, whether Sue Murphy and her friend, by their counsel, forgot or failed to give due deference to the existence of the previous order is immaterial. It has been necessary to pronounce this judgment with some degree of vigour as the words "full and final settlement" have not been judicially considered in the context of upholding a Court Order disposing of litigation between the parties. There is a public purpose to be served in giving Court Orders full efficacy and power. The argument raised by Mr Derham would open the floodgates to an argument that orders pronounced prior to a "full and final settlement" each had a separate life which continued beyond the full and final settlement.

In my view, that would be an unsatisfactory state of affairs. Public policy as well as commonsense combine to give to the term unimpeded force **[4]** and effect. All issues in dispute between the parties are despatched by such a settlement; all previous Court Orders are subsumed by it. This appeal will be dismissed.

APPEARANCES: For the appellants Murphy & Chen: Mr M Derham. counsel. Wong & Lai, solicitors. For the respondent Yolanda Nominees: Mr I Bowditch, counsel. Caleandro Guastalagname & Co, solicitors.
