Bar Speak



with Andrew Lyons

## enforcing settlements in the federal court

The Full Court of the Federal Court has again considered that Court's power to enforce settlement agreements within the compromised proceedings, rather than requiring the commencement of new proceedings.

In Macteldir Pty Ltd - v - Dimovski copyright proceedings were compromised by an agreement that the respondents would consent to orders including orders restraining them from making certain publications.

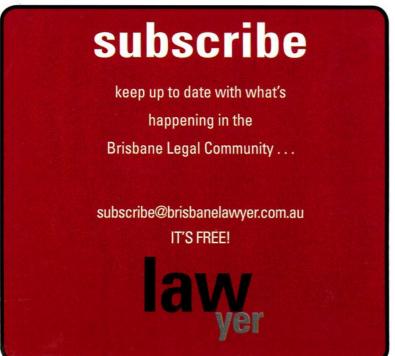
Despite the terms of the compromise, the only orders made were for dismissal of the proceedings and costs. The other proposed orders were replaced by undertakings to the Court given by the respondents.

Subsequently, the applicant alleged that the respondents distributed further publications that breached the compromise terms. It filed a motion, within the original proceeding, seeking damages and injunctions. The injunctions sought more than simply restraining breaches of the undertakings.

Section 22 of the Federal Court Act gives the Court power, in matters where it otherwise has jurisdiction, to grant remedies "in respect of a legal or equitable claim properly brought forward."

The respondents argued, inter alia, that the motion was outside section 22 because it claimed relief that was legally, factually and temporally removed from the claims in the original proceeding.

The applicant argued that the relief sought was within power because the compromise was of proceedings in the Court and concerned orders that were to have been made in the Court under the compromise.



The Full Court was prepared to assume that in assessing a claim for enforcement of a compromise of proceeding. Court was "properly brought forward" under section 22 the principles include that:

- If the compromise involves matters extraneous to the proceeding then ordinarily enforcement is to be d separate proceedings. Extraneous matters include things the ordinary range of what the Court would order in the proceeding.
- If there is a substantial question to be determined as to the of the compromise, or its enforceability, ordinarily seproceedings are required.
- Even in the above two categories of case, the Connevertheless enforce the compromise within the proceeding, if justice can be done under the summary proof. This depends on the extent to which there are extimatters and credibility issues and the desirability of pland discovery.
- 4. Circumstances that may incline the Court to enforce original proceeding, a compromise that would not other so enforced is a need for immediate interference to give to the compromise or an express stipulation in the com that an order for its enforcement may be made in the pro-However, such a stipulation does not bind the Court.
- 5. Otherwise, separate proceedings are required.

The Full Court held that the Court did not have power under 22 to enforce this compromise within the original proceed motion was not one "properly brought forward" because the undertakings were treated as orders, propositions 1 and applied. The publications said to breach the compromise we after it and did not form part of the original proceeding. I motion involved matters extraneous to the original proceed substantial questions about whether there had been a bread compromise.

The post-compromise publications also meant that the mooutside the associated jurisdiction conferred by section 3 Federal Court Act as the motion and original proceeding arise out of the same substratum of fact.

The significance of practitioners carefully considering thes when negotiating and enforcing compromises is demonstrationally this case: The outcome was an avoidable disaster for the a – the matter had reached the first day of a five day hearing this decision was made.

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