

A BACKGROUND

This matter started as a "Summons for Production" 2012/134698 on 27 Apr 2012 to determine the value of the Intestate estate of Raymond DUFFY [RHD] so that a fair and reasonable Family Provisions Claim could be made for Tasman DUFFY [THD]

Initially Carline DUFFY [CJD] as the Tutor for her son Tasman DUFFY had been told by her ex-husband RHD that the only capital in his estate was the deceased's mother (Agnes Beatrice DUFFY [ABD]) house and the Trail Commissions from his company Migeba Pty Ltd [Migeba]

On 12 Jul 2012 the Request for Particulars to determine the value of the Intestate Estate was sent to the Widow Tuula DUFFY [TAD]

This Request for Particulars required details of income from contracts and bank statements of the deceased's business Migeba Pty Ltd {Att A – Item 2}

The bank statements and contract records were not provided by the Widow

By Fri 26 July 2013 the Widow again had not complied with Court Orders on 03 Jul 2013 to provide Affidavits about the Assets and Liabilities of the estate

As a consequence on Wed 28 Aug 2013 the Plaintiff lodged an Interim Family Provisions Claim to be heard on Wed 04 Sep 2013

B EVENTS WED 04 SEP 2013

This a record of three meetings with Rocco ARDINO [RMA] the Solicitor of the Defendant on Wed 04 Sep

- a 09:30 1st Court Hearing – adjourned to 11:45
- b 11:00 Meeting with Defendant's Lawyer to seek resolution
- c 11:45 2nd Court Hearing – concluded 13:12

a 09:30 1st Court Hearing – adjourned to 11:45

Carline DUFFY [CJD] and Stephen GOULD [SGG] arrived at Court 2 Hospital Rd SYDNEY at 09:25 Wed 04 Sep 2013

Rocco ARDINO [RMA] was there and said he had forgotten the file !!

RMA asked CJD if she had received Tuula's DUFFY [TAD] Affidavit emailed the afternoon before on Tue 03 Sep 2013 in response to the Notice of Motion for an Interim Family Provisions Order

RMA had sent CJD an email to say that he was strenuously defending the Motion for an Interim FPO and had attached a 12-page Affidavit

At 09:30 the matter was called before HALLEN J who adjourned the matter in spite of the protests of CJD until 11:45 to allow RMA to retrieve the file

While walking away from the Court RMA could be heard speaking with someone on his Mobile to ask if they could appear in Court that day

b 11:00 Meeting to seek resolution

CJD decided to go down to Sydney Library and look at the email that RMA had sent her with the Affidavit from TAD.

The Affidavit attachment was upside down, with each page as a separate document so it could not be printed as a complete document and was poor resolution

CJD called RMA and proposed meeting before the Court hearing to see if a resolution could be agreed and CJD asked for a hard copy of the Affidavit

RMA then called CJD back to asked her to adjourn to it to 14:00 so that he could obtain a barrister to defend the Motion

CJD agreed to meet at 11:00 to discuss the matter before the hearing at 11:45

At 11:00 RMA produced a hard copy of the unsigned 12-page TAD Affidavit, a fuzzy printed version of the sworn Affidavit and a 3-page Affidavit from RMA on his costs

RMA said there was no money in the Estate as it was insolvent so it would minimise CJD costs if she withdrew the matter as soon as possible

CJD then asked "why are you talking about Mediation when your Client is still paying over \$ 2,000/mth for the Mercedes Lease, car insurance and running costs".

SGG said "you have no interest in Mediation just building up your fees and repeating the mantra "the Estate is insolvent" whilst paying over \$ 2,000 a month for the last 18 months to run and maintain a \$ 131,000 car that Tuula cannot drive"

CJD said the outstanding 6 Credit Cards approximated \$ 37,000 Debt claimed by RMA may not exist as the statements supplied were all more than 1 year old

CJD said she believed that they had all been written off by the banks and showed RMA the two Westpac Statements for:

1	Mastercard 5163-1910-0031-6900	\$ 6,234.26	15 May 2012
2	Mastercard 5163-2020-8088-4417	\$ 8,573.55	02 Jun 2012

Both statements included the sentence:

"If there are insufficient funds in the Estate to clear the above debt or Mr DUFFY died intestate, please forward a Statutory Declaration detailing this fact signed by the Executor and witnessed by a Justice of the Peace" {Att B – Mastercard statement 2}

RMA stood up and said as he walked out "I had better write to the bank and tell them that there are funds" (!!!)

c 11:45 2nd Court Hearing – concluded 13:12

When the matter was called at 11:45 RMA appeared in Court shortly followed by Barrister STEWART who had represented RMA at short notice on a previous Interim Family Provisions Application on 12 Dec 2012 at a cost \$ 4,400 {Att C – Aff Costs RMA 03 Sep 2013 – Page 2}

Handwritten signature

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HALLEN J said to SGG "you are not allowed to speak just utter quiet words to Ms DUFFY otherwise you will be removed from the Court"

SGG said "In the interests of Truth and Justice in this matter I would have thought you would let me speak as Ms DUFFY has little experience of speaking in Court and is very nervous about the process and procedures" (This is not included in transcript)

HALLEN J said again "You are not allowed to Address the Court"

RMA said he had not received the Notice of Motion in time so CJD showed the Judge the Affidavit of Service by Express Post on 28 Aug 2013 and the email 28 Aug 2013 Service of Notice of Motion

There was a discussion about the Affidavit and STEWART said he only had 2 pages and it was not sealed by the Court

The Judge then said "Who decided that that the Notice of Motion would be heard today as he had no record of it and the Application was undated for hearing"

The Judge then sent down his copy of the Motion that had no time and date on it

SGG said the Registry was responsible for putting the time and date on Court-Stamped documents and there was a time and date given by the Registry on the copy of the Motion CJD had sent to RMA

SGG said the Motion was listed on the Court Computer System for the Motion to be heard today {Att D – Print out Motion and Directions hearing 04 Sep 2013 }.

The Judge then said that this was an Application lodged out of time on 04 Feb 2013 and he had not granted the Extension of Time for the Application yet !!!!

HALLEN J then said he could not grant an Interim Family Provisions Order because an Administrator had not been appointed

CJD said that is the 1st time any Judge had told her that an Interim FPO could not be granted until an Administrator is appointed

CJD said the Defendant had no interest in being appointed Administrator as RMA said she was very concerned she could be sued by other Family members hence the problems getting the Defendant to respond to Court Orders

HALLEN J then asked CJD on what Affidavits did she rely

CJD said there are 3 Affidavits

- 1 The Affidavit filed with the Notice of Motion stating over \$ 525,000 had been received in Trail Commissions from 27 July 2010 - 30 Jun 2013 with the Migeba Pty Ltd Banks Statements as the main Annexure
- 2 The Affidavit prepared 16 Aug 2013 which analysed the 20 pages of financial documents provided by the Defendant on 26 Feb 2013
- 3 The Affidavit dated 02 Sep 2013 prepared by Stephen GOULD providing evidence of the follow-up with the Defendant's Lawyer to obtain the Affidavits ordered by the Court on 03 Jul 2013

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HALLEN J then asked for a copy of Agnes Beatrice DUFFY Will as it appears that Raymond Herbert DUFFY was not only the Executor but also a Beneficiary

SGG said there was a copy of the Will on the Court File

HALLEN J asked SGG to leave the Court

HALLEN J then asked Barrister STEWART if the Defendant had filed the Affidavits as per the Court Directions on 03 Jul 2013

HALLEN J had to ask the question at least 8 times before RMA confessed to Barrister STEWART those Affidavits had not been provided

HALLEN J said words to the effect "Mr ARDINO this is not the first time you have been very poorly prepared when you appear before me"

HALLEN J then repeated the words of HAMMERSCHLAG J on 14 Mar 2013 about reporting RMA to the Law Society for not complying with Court Directions

This was the same comment made by HAMMERSCHLAG J on 14 Mar 2013 about Rocco ARDINO in matter 2007/00257897 Elias George WAKIM v Anthony TADROS" {Att E – Affidavit Court Hearing before HAMMERSCHLAG J 14 Mar 2013}

HALLEN J gave Directions that the Defendant had to lodge with his Associate Affidavits in accordance with paragraph 9 PN SC Eq 7 by 16:00 Mon 16 Sep 2013

HALLEN J gave directions to CJD to provide Affidavits on which she relies by 27 Sep 2013 including:

- 1 Tasman's Medical Condition
- 2 Tasman's Needs
- 3 Carline's Assets and Liabilities

CJD said these documents had already been sworn and filed by Clive MILLS her lawyer before the hearing on 17 May 2013

HALLEN J then asked CJD what were here costs for the day including travel costs.

It is assumed that by this question that Costs were awarded for the Plaintiff and against the Defendant

This is an important issue as RMA has stated in his Costs Affidavit that his Counsel's Costs on 11 Dec 2012 for a "defended Urgent Application for Interim Family Provision were \$ 4,400" {Att C – Page 2 Affidavit RMA 03 Sep 2013}

The matter was set to be heard again on 03 Oct 2013

The Court adjourned 13:12 W 2013/09/04

(This record should be checked against the transcript of the hearing)


Carline J DUFFY
Secondary School Teacher

Date: T 10 Sep 2013


Stephen G GOULD
Management Consultant

Date: T 10 Sep 2013