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PIKES NEWS

Contempt of Court – Carwash operator avoids imprisonment

Local government authorities are constantly seeking to enforce breaches of the planning and development regime in the Land and Environment Court.

The follow case shows that, even though the court proceedings may have come to an end, there may still be issue of compliance with court orders and the difficulties of seeking punitive measures to compel compliance.

The case is also a reminder that imprisonment is a clear possibility when it is found that the non-compliance with court orders is a deliberate and defiant act.

Sydney City Council v Sydney Tool Supplies Pty Ltd & Daniel Bek (No 3) [2012] NSWLEC 27

23 February 2012 – Land and Environment Court of NSW – Sheahan J

The Council charged the Respondents with contempt of court on 30 October 2008 for failure to comply with orders made by the court in the substantive proceedings to prohibit the Respondents from using, advertising, leasing or licensing service station premises in King Street Newtown for the purposes of a carwash, without development consent, and require the removal of some signage and other unauthorised building works.

In the substantive proceedings, the Council had been successful in establishing that the carwash and café operations, and associated structures and advertising, were conducted without the necessary consent.

The Respondents had originally entered pleas of not guilty, but

changed their plea to guilty on the first day of the defended contempt hearing on 11 March 2009.

The First Respondent company was deregistered on 3 April 2009 and the contempt proceedings continued against the Second Respondent, Mr Bek – the sole director of the company.

After the making of the court's orders in the substantive proceedings, and even after the plea of guilty had been entered, the premises continued to be used for the purposes of a carwash. Further, Mr Bek had concocted an “*elaborate scam*” in that he had sold his business to a fictitious alias, when in fact, he continued to operate the business. Mr Bek had also assaulted two Council officers in their investigation of the continuing use, for which he was convicted.

During the sentencing of the matter, the issue of fitness to plead or stand trial was raised and this issue was not resolved until 10 November 2011 when he was deemed fit to plead and stand trial (see *Sydney City Council v Sydney Tool Supplies Pty Ltd & Daniel Bek (No 2)* [2011] NSWLEC 196). Although raised by his representatives, Mr Bek had refused to participate in the court's consideration of his fitness to plead or stand trial until his arrest on 29 June 2011 under a court issued warrant.

Justice Sheahan held that the contempt was objectively very serious and found a term of imprisonment appropriate in addition to a substantial fine. However, his Honour held that the subjective circumstances of Mr Bek warranted the sentence being suspended and the fine reduced. His Honour accepted that a burden would be placed on his young family and that his business had ultimately failed.

Accordingly, the term of imprisonment for one year and nine months was suspended. Mr Bek was fined \$30,000 and ordered to pay the costs of the substantive proceedings on a party-party basis as well as all costs relating to the contempt proceedings on an indemnity basis.

For inquiries about this case please contact Peter Jackson or James Fan



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