

# FEDERAL COURT OF AUSTRALIA

## Rodgers Reidy (Qld) Pty Limited v Google Australia Pty Limited [2017] FCA 65

File number: NSD 126 of 2017

Judge: **BROMWICH J**

Date of judgment: 1 February 2017

Date of hearing: 1 February 2017

Registry: New South Wales

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Commercial Contracts, Banking, Finance and Insurance

Category: No Catchwords

Number of paragraphs: 17

Counsel for the Applicants: Ms R Mansted

Solicitor for the Applicants: Polczynski Lawyers

Counsel for the First Respondent: The First Respondent did not appear

Counsel for the Second Respondent: The Second Respondent did not appear  
The Second Respondent did not appear because he didn't find out about the hearing until 7am the next morning.

## **ORDERS**

**NSD 126 of 2017**

**BETWEEN:                   RODGERS REIDY (QLD) PTY LIMITED ACN 117 655 973**  
First Applicant

**RODGERS REIDY (NSW) PTY LIMITED ACN 089 898 813**  
Second Applicant

**RODGERS REIDY (VIC) PTY LIMITED ACN 112 011 321**  
Third Applicant

**RODGERS REIDY (INTERNATIONAL) PTY LIMITED**  
**ACN 124 647 696**  
Fourth Applicant

**AND:                         GOOGLE AUSTRALIA PTY LIMITED ACN 102 417 032**  
First Respondent

**GORDON CRAVEN**  
Second Respondent

**JUDGE:                     BROMWICH J**

**DATE OF ORDER:     1 FEBRUARY 2017**

### **THE COURT ORDERS THAT:**

1.     Until further order of the Court, the second respondent, Gordon Craven, cause, before 10.00 am on Thursday, 2 February 2017, the advertisement titled “Rodgers Reidy – David Hambleton gets sued – pleading.com.au” or similar, to be removed or de-linked from Google Adwords, such that a link to the advertisement, or the advertisement itself, or anything identifying the advertisement, does not appear when an Internet search of any kind is conducted for the words “Rodgers Reidy” or any other words.
2.     Until further order of the Court, the first respondent, Google Australia Pty Limited, cause, before 10.00 am on Thursday, 2 February 2017, the advertisement titled “Rodgers Reidy – David Hambleton gets sued – pleading.com.au” or similar, to be removed or de-linked from Google Adwords, such that a link to the advertisement, or the advertisement itself, or anything identifying the advertisement, does not appear

when an Internet search of any kind is conducted for the words “Rodgers Reidy” or any other words.

3. Pursuant to r 1.39 of the *Federal Court Rules 2011* (Cth), the time for service of the originating application, urgent application before start of a proceeding and the affidavit of Stephen Michael Polczynski sworn 1 February 2017 (all filed today), and a copy of these orders be shortened to 9.30 pm on Wednesday, 1 February 2017.
4. Pursuant to r 10.24 of the *Federal Court Rules 2011* (Cth), service be effected on the second respondent, Gordon Craven, by email to the addresses: qahjim@gmail.com and Gordon@getmail.com.au.
5. Pursuant to r 10.24 of the *Federal Court Rules 2011* (Cth), service be effected on the first respondent, Google Australia Pty Limited, by:
  - (a) in the first instance, by email to the addresses:  
patrick.fair@bakermckenzie.com and adrian.lawrence@bakermckenzie.com;  
and
  - (b) by physical service to the offices of Baker McKenzie as the address of the registered office of the first respondent, Google Australia Pty Limited, at the earliest available time on Thursday, 2 February 2017.
6. The matter be listed before Justice Bromwich as Duty Judge at 2.15 pm on Thursday, 2 February 2017 for any further hearing of the application for interlocutory relief and initial case management of the proceedings.
7. Costs reserved.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## REASONS FOR JUDGMENT

### Revised from transcript

#### **BROMWICH J:**

- 1 This matter was brought before me as duty judge during the afternoon of Wednesday, 1 February 2017. The applicants are each members of an affiliated network of accountancy firms operating under the name Rodgers Reidy.
- 2 The first three applicants are **Rodgers Reidy (Qld)** Pty Limited, **Rodgers Reidy (NSW)** Pty Limited and Rodgers Reidy (Vic) Pty Limited. Each of those three companies is separately incorporated, operating their own business. They frequently refer work to one another and provide assistance to each other, particularly in circumstances where a director of one of those first three applicants is appointed as an administrator, liquidator, receiver or trustee in bankruptcy and the assets the subject of that arrangement are held in multiple States. Each of the first three applicants owns a share in the fourth applicant, Rodgers Reidy (International) Pty Limited.
- 3 One of the principals of the first applicant, Rodgers Reidy (Qld), Mr David Hambleton, was, on or about 5 March 2015, appointed as the trustee in bankruptcy of the bankrupt estate of Gordon Craven. Mr Craven is the second respondent.
- 4 I need not for present purposes go into the details of what occurred in the course of that bankruptcy. It is fair to say in a summary fashion that Mr Craven was not happy with various things that took place in relation to that bankruptcy, with a particular focus on a property that had been in his daughter's name and what happened to that property, including a division of the proceeds of sale between the trustee in bankruptcy and his daughter. There were also certain other complaints in relation to, for example, the sale of some internet domain names. In any event, it seems that Mr Craven has a significant disagreement with the way in which his bankrupt estate was administered.
- 5 Several months ago Mr Hambleton became aware of a **website** by which Mr Craven, it seems, was ventilating his objections to the way his bankruptcy was conducted and also was referring to some litigation that he had commenced against Mr Hambleton. It seems that the website alone did not cause Mr Hambleton to take any particular additional steps. However, on or about 30 January 2017 the solicitor for the applicants had become aware of a greater

problem. On 30 January 2017, the solicitor for the applicants, Mr Stephen Polczynski, conducted a search on the Google search engine for the term “Rodgers Reidy”. He produces as an annexure to his affidavit a screenshot of the results of that search. Essentially, that search produces an online advertisement and that advertisement takes the viewer to the website which contains the complaints and allegations that Mr Craven makes against Mr Hambleton. I have read a part of that website that contains strident criticism of and serious allegations against Mr Hambleton.

6 Mr Polczynski’s affidavit records, on information and belief from Mr Hambleton, a denial of all of the allegations that have been made, but in particular a denial that he acted other than in accordance with his professional and ethical duties in respect of Mr Craven’s bankruptcy or that he acted unlawfully in respect of that bankruptcy, along with a denial of allegations of a sabotage or obstruction of legal proceedings, misappropriation, trespass, incompetency and other allegations, including procuring an extension of Mr Craven’s bankruptcy.

7 The affidavit evidence establishes that Geoffrey Reidy and Andrew Barnden of Rodgers Reidy (NSW) were appointed as voluntary administrators of a company which operates certain well-known retail stores. I was informed from the bar table that this took place earlier today. Those stores operate at numerous locations throughout Australia and in concession stores in certain department stores, with in excess of 1,000 employees. It is expected that that voluntary administration will become publicly known, most likely by way of a press release which may already have gone out. It is anticipated that members of the public, including employees, gift card holders and creditors, will take an increased interest in the Rodgers Reidy name, and that searches of the Rodgers Reidy name via the Google search engine are likely to increase significantly following the announcement of that appointment of Mr Reidy and Mr Barnden as voluntary administrators.

8 It is asserted by Mr Polczynski in his affidavit – and I have no reason to doubt it for the limited purposes of this interlocutory application – that a portion of the creditors of the company now in administration are likely to be unsophisticated persons who would not have had previous experience in dealing with voluntary administrations. The applicants are concerned that such people, and perhaps others, may view the publication as a credible source of information and rely upon it in concluding that Rodgers Reidy and its officers are untrustworthy and/or incompetent.

- 9 It is pointed out that under the *Corporations Act 2001* (Cth), voluntary administrators are required to hold a first meeting of the creditors of the company within eight business days of their appointment, which means in a practical sense either by the end of next week or very shortly thereafter. At that meeting, the company's creditors may pass a resolution to remove the administrators and appoint replacement administrators. While of course there's nothing wrong in that step being taken, it is important that that sort of step is taken upon a proper basis. If such a vote was to take place based on the information on the website, which, it is asserted and I have no reason to doubt at present for an interlocutory purpose, is incorrect, the first applicant would cease to be the administrator of the company and that in itself will cause significant additional costs and expenses in the administration and may prejudice the prospect of the business being able to be sold as an ongoing concern, continuing to trade or otherwise being sold. There is therefore a very real interest in protecting the interests of creditors in not having the proper objects of the administration of the company being thwarted in this manner.
- 10 The applicants – and in particular the first applicant – are concerned to ensure that the administration progresses as efficiently as possible for the benefit of all the creditors of the company and view the likely access to the website via the Google ad link as something that will hamper or delay the administrators, in being required to respond to irrelevant queries in relation to the subject matter of that website.
- 11 What is sought as an interim matter ahead of final relief by what is styled “an urgent application before start of a proceeding” – which has become in effect an interlocutory application, because the application has by the time of giving these reasons been filed and the proceedings therefore commenced – is ultimately a permanent injunction restraining the publication of the representations on the website, and also orders within 24 hours of final determination of the proceedings of the removal of the advertisement, both by Mr Craven and also by the first respondent, Google Australia Pty Limited.
- 12 As an interim matter, the applicant seeks short service, and also interlocutory relief, which does not deal with the website but does deal with the advertisement which provides the link to the website. Therefore the ambit of the interlocutory relief sought is relatively narrow.
- 13 I am informed by Ms Mansted, who appears for the applicants on this application – and I have no reason to doubt it for the purposes of this interlocutory application – that Mr Craven, the second respondent, is still an undischarged bankrupt. It therefore follows that the

ordinary alternative remedy in place of an injunction, of damages, is in truth no real remedy at all. That factors importantly into the balance of convenience in relation to an injunction, particularly when it is one of a limited nature which goes to the Google advertisement listing rather than to the website itself.

- 14 It follows that the actual detriment in giving the interlocutory relief now sought is of a very limited ambit, both in terms of Mr Craven, the second respondent, being able to propagate his views if he was able to satisfy a Court that he should not be prevented from doing so and to Google in being deprived of the entitlement to ongoing advertising revenue, which, although I do not have evidence as to the amount, must be relatively limited in quantum.
- 15 In any event, if it was later found that this order was not properly made or should not be continued, the detriment would be for a limited time and of no lasting impact beyond that. Importantly, as well as there not being a lasting detriment, once knowledge of the ad links was ascertained, it seems that the applicants have moved reasonably quickly. It was first checked by the solicitor for the applicants on Monday, and it is now Wednesday evening.
- 16 The allegations made by Mr Craven, if untrue, apart from occasioning perhaps significant detriment to the applicants' reputation, it seems to me may well cause significant risk of harm to the efficaciousness of the administration; noting that the administration is in the public interest, and in particular in the interests of creditors. There is also a significant risk of undue fear and concern being occasioned to members of the public, to consumers, to creditors and to employees of the companies now under administration. As already mentioned, the ambit of the immediate relief sought is limited to taking down the ad link at this stage and not to the website, although the website itself, it seems, is to be caught by the longer-term relief sought in relation to the representations.
- 17 I am satisfied that in all the circumstances, the balance of convenience favours the granting of the interim relief that has been sought, because of its limited impact and because of the significant detriment if this interim step is not taken. Upon the applicants through their counsel giving the usual undertaking as to damages and also having already given an undertaking to pay the filing fee in order for the application to be filed today, I made the orders for interim relief sought today.

I certify that the preceding seventeen (17) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Bromwich.

Associate: 

Dated: 8 February 2017