



Transcript of Proceedings

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REVISED
State Reporting Bureau
Date 27/03/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 33 of 2000

QUINGENTI PTY LTD

Applicant (Defendant)

and

JIDDABUL ABORIGINAL CORPORATION

Respondent (Plaintiff)

CAIRNS

..DATE 25/03/2002

JUDGMENT

As corrected

HIS HONOUR: This is an application by the respondent (defendant, Jiddabul Aboriginal Corporation in administration) to set aside a default judgment which was entered on 18 July 2000.

The primary basis upon which the judgment is sought to be set aside is that the originating proceedings were not served on the defendant. The evidence disclosed that the claim was sent to an address which was similar to, but not accurately describing, the address of the defendant. The defendant corporation had changed address, though it still continued to have an office in Ravenshoe.

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In support of the application to set aside the default judgment, an affidavit by Margaret Lorraine Freeman has been filed in which the deponent swears that the statement of claim was, in fact, never received by the corporation. That affidavit also swears to the change in address.

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Mr Walker, who was the director of the company while it was in existence, has sworn an affidavit setting out the terms of the claim and he has also read an affidavit which indicated that inquiries made by him resulted in information that documents sent to the address contained in the statement of claim would have been delivered to the defendant corporation.

That conflict of evidence has to be resolved in favour of the direct evidence by the office of the corporation, saying that the statement of claim was not received.

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The matter is further complicated by the fact that the plaintiff company has now been deregistered and Mr Walker's position in upholding the judgment has been challenged.

It seems to me that, whether the company has been deregistered or not, is not a factor in determining whether as a matter of justice a judgement which has been irregularly entered, as in my view this one has, ought to be set aside.

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I accept the evidence of Margaret Freeman that the statement of claim was not in fact received by the corporation, that statement of claim not having been addressed to the registered office of the company when it was sought to be served by prepaid post in accordance with the provisions of the Corporations Act.

I take the view that service has not been proven and as a consequence, the judgment entered into by default on the 18th of July 2000 ought to be set aside.

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Both the applicant and the respondent seeks other forms of relief, but it seems to me that none of these can be dealt with while the company remains deregistered.

In the expectation that if either party wishes to pursue claims or counterclaims, then as a preliminary step, the company must be reinstated on the register.

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I will reserve any question of costs on the setting aside of a judgment application until such an event occurs.
