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[2002] QS 099

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION
CULLINANE J

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State Reporting Bureau
Date: 8 / 3 / 02

CARL ROBERT ANDERSON Plaintiff
and
PAUL JOSEPH KENNY First Defendant
and
CLINTON ANDERSON Second Defendant
and
NOMINAL DEFENDANT BY ORIGINAL ACTION Third Defendant

AND BETWEEN

NOMINAL DEFENDANT Plaintiff
and
CARL ROBERT ANDERSON First Defendant
and
WILLIAM JOHN ANDERSON Second Defendant
and
PAUL JOSEPH KENNY Third Defendant
and
CLINTON ANDERSON BY COUNTERCLAIM Fourth Defendant

TOWNSVILLE

..DATE 05/03/2002

JUDGMENT

HIS HONOUR: (1) This is an application for the transfer of certain proceedings to Townsville and for orders that certain of the actions be consolidated and that all actions be heard together.

(2) The actions the subject of the application are as follows:

- (a) Action number 1933 of 1998 (Brisbane Registry);
- (b) Action number 303 of 2000 (Townsville Registry); and
- (c) Action number S6934 of 2000 (Brisbane Registry).

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(3) The applicant is the plaintiff in action no 1933 of 1998 (Brisbane). One Carl Robert Anderson is the plaintiff in action number 303 of 2000 (Townsville). Both of these actions arise out of the same incident, which involved a collision between two motorcycles. This occurred in North Queensland. The applicant and Carol Robert Anderson were on one of the motorcycles. Each alleges he was a passenger and that the other was in control of the motorcycle. In action number 1933 of 1998 (Brisbane) the only defendant is the Nominal defendant, which is sued because both motorcycles were uninsured. In action 303 of 2000 (Townsville) the applicant, one Clinton Anderson - who was the rider of the other motorcycle - and the Nominal defendant are sued.

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(4) Subsequently, the applicant suffered injuries in a motor vehicle collision in Ipswich and later instituted proceedings, S6934 of 2000 (Brisbane) in respect of these injuries. The insurer of the vehicle concerned was FAI and the Nominal

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defendant, represented by different solicitors to those acting in the other two actions, has the conduct of the defence in this action. Liability has been admitted in this action.

(5) In actions numbers 1933 of 1998 (Brisbane) and 303 of 2000 (Townsville) the Nominal defendant has counterclaimed against both the applicant and Carl Robert Anderson, together with Clinton Anderson, the owner and rider of the motorcycle and William John Anderson, the owner of the motorcycle that the plaintiff and Carl Robert Anderson were on.

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(6) I was told that there is a substantial dispute as to the extent to which each of the applicant's two accidents have contributed to his present condition and it seemed to be common ground that that issue, in both cases, should be tried together.

(7) There is obviously a strong argument in favour of the issues of liability in actions 1933 of 1998 (Brisbane) and 303 of 2000 (Townsville) being heard together.

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(8) All parties were represented on the application except for Clinton Anderson. The Andersons are members of the one family.

(9) It seems that all actions are broadly at about the same state of advancement. It also seems that a trial of the matter could be held at about the same time at either Brisbane or Townsville. There is nothing to suggest that there would

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be any undue delay if matters were to proceed at either place. I have an affidavit from Mr McCormick on behalf of the Nominal defendant in action number 6934 of 2000 (Brisbane) setting out estimates costs of his client and Mr Wilson's client (the Nominal defendant in both cases) if the matters were heard in Townsville. No doubt somewhat similar travel costs would be incurred if the Andersons and their representatives had to travel to Brisbane. It is not clear whether they would incur additional accommodation costs and, if so, what they might be if the matter is heard in Townsville.

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(10) I was told that the litigation would probably extend over some two weeks or so.

(11) An argument was advanced by Mr Wilson on behalf of the Nominal defendant that the Court did not have the power to order the transfer of the actions which is sought. This was based upon the terms of Rule 45 of the UCPR and section 289 of the Supreme Court Act of 1995. These provide respectively as follows:

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"(Rule 49) Transfer of proceeding.

49 The Court as constituted by a Judge or Registrar may order the transfer of a proceeding to another Registry."

"(110, 305) Removal to another Registry.

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289 Any party may apply to a Judge or Registrar to have a cause or matter removed into another Registry; and if it is made to appear to such Judge or Registrar that such cause or matter could be tried or heard more expeditiously, cheaply, conveniently, or advantageously in the district for which such other Registry is constituted, such Judge or Registrar may remove the same

to such other Registry, and thereupon the proceedings shall be continued in such other Registry and the cause or matter shall be tried or heard in such district."

(12) It was submitted that the Court's power on an application to transfer is limited to making an order transferring a matter from the Registry of the Court hearing the application to another Registry.

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(13) No authority was cited for this. It seems to me that this would impose a limitation of the Court's powers that the language used does not compel and also that some difficulties might arise if such a construction was adopted. Mr Reid, on behalf of the applicant, pointed out some of these in his submissions. A comparison of Rule 45 with Rule 49 is of some significance. Rule 45, which applies to the District Court, a Court of limited territorial jurisdiction, unlike the Supreme Court, contains an express limitation of the kind contended for here. A similar result could have been achieved in relation to Rule 49 by the use of language imposing a similar express restriction.

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(14) I am satisfied that I have the power to make the orders sought.

(15) The test to be applied is that contained in section 289.

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(16) It seems to me plain that the interests of justice would favour the consolidation of the actions. It was contended by

Mr Wilson that various issues might be dealt with separately. The progression of issues which he suggested certainly has something to commend it, but experience tends to show that the trial of issues piecemeal ultimately results in delaying the ultimate disposition of litigation and is more expensive.

(17) As to the appropriate venue, I think a fair statement of the position revealed by the evidence and summarised in the written outline of the applicant is as follows:

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(a) All of the liability witnesses live in North Queensland except for the applicant, who of course seeks to have the matters heard in Townsville.

(b) There are a large number of medical witnesses in the actions. These are based both in North Queensland and in Brisbane. I think it likely that the evidence of at least some of these would be taken by telephone, as is becoming an increasingly common practice. I do not think there is any decisive preponderance one way or the other in this respect.

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(c) It is clear that wherever the actions are heard, a number of people will have to travel and there will be some dislocation involved.

(d) Those opposing the application to transfer represent the Nominal defendant. I think, as was contended by those supporting it, that it is an important

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consideration that any additional costs associated with the action being heard in Townsville would impose less of a burden on a statutory defendant than the additional costs of litigation in Brisbane would have on the lay defendants who reside in North Queensland. The applicant, of course, would have some additional costs if the matter is heard in Townsville, but he seeks an order having that effect.

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(18) I regard this last mentioned consideration, that is, the burden which the lay defendants would have to bear if the matter was heard in Brisbane as a particularly important one in the present case. When I balance the various considerations I am satisfied that the most appropriate course to take is to order the transfer of the two Brisbane actions to Townsville, make the order for consolidation sought and order that all actions be heard together.

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(19) I order:

- (a) That action number S1933 of 1998 be transferred from the Brisbane Registry to the Townsville Registry;
- (b) That action number S1933 of 1998 be consolidated with action number S303 of 2000 (Townsville Registry);

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(c) That action number S6934 of 2000 be transferred from the Brisbane Registry to the Townsville Registry;

(d) That the trial of all actions be heard together.

(e) The costs of the application be reserved to the trial Judge.
