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Transcript of Proceedings

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No S8 of 1998
Writ No 98 of 1999

WAYNE SYDNEY ROSEMAN	Plaintiff
and	
TROPICAL REEF SHIPYARD PTY LTD	First Defendant
and	
MAXIMUS NO 36 PTY LTD ACN 009 933 706	Second Defendant

CAIRNS

..DATE 22/07/2002

As corrected

JUDGMENT

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: This is an application initially by the defendants in the combined proceedings for an order that the plaintiff submit to mediation. The plaintiff also applies to have the matter listed on the call-over list.

The two actions now combined arise out of two separate work-related incidents in which the plaintiff sustained injury. The first is the 16th of March 1995 and the second was on the 5th of August 1996. The indication from the pleadings and otherwise, is that there remains a significant dispute on the issue of liability for injuries arising from the second incident. However, counsel for the defendant indicates that the main points of difference do relate to the assessment of various allowances for quantum of damages.

There was an attempt at a compulsory conference in April 2002 which was unsuccessful because of the difference in attitude between the parties concerning questions of liability. Also in April 2000, the plaintiff sought to enter the matter for trial. Both those steps were somewhat premature because the full investigation into the claim had not been made and indeed, there is still an outstanding matter of an up-to-date loss and damage statement being provided by the plaintiff. I am assured by counsel appearing on this application for the plaintiff that that up-to-date loss and damage statement can be prepared within the space of a couple of weeks.

The arguments raised against mediation is that if the mediation fails, it will weigh heavily on the plaintiff for

two reasons; because of the cost of such mediation and also because the plaintiff suffers from a nervous disposition which to some extent is related to the accident and therefore finds it difficult to travel. If he were to travel to Cairns, he would need to do so in the company of his wife.

The application for mediation is opposed also on the basis that the prospects of success are not high. This is alleged, because there has been no reassurance given by the defendants that their attitude as expressed in April 2000, has undergone any change.

In counter to these arguments, the defendant says that it is prepared to pay all the costs of the mediation, save for the retainer of plaintiff's counsel. It takes the view that mediation would not delay the trial in any event because the earliest trial date will be late September 2002 and the mediation could be held conveniently before then.

The defendant also argues from the material relied upon by the plaintiff that mediation would cause him additional stress. That material, a report of Mr Walkley, psychologist, is somewhat old and that since the furnishing of that report, the plaintiff has in fact travelled to Brisbane on two occasions for medical reports.

I believe this latter concern about increased stress for the plaintiff can be alleviated by taking away the requirement for personal attendance by the plaintiff at the mediation and

leaving to him the option of whether he attends in person or attends by telephone or by video link if that can be arranged.

In all the circumstances, it seems to me that if it be the case that the real issue between the parties is the quantification of various allowances of quantum and notwithstanding that there is no concluded settlement on questions of liability, that there will be advantage in having mediation. That mediation should take place not earlier then one month from today's date, nor later than perhaps six weeks from today's date. I make that remark, not by way of condition upon the order, but simply to identify that the worth of the mediation process will be enhanced if it is held within that time.

The plaintiff has been attempting to have the matter entered for trial for some time, although this has not been pursued with enthusiasm until more recent times. It seems to me that apart from the provision of the updated loss and damage statement, the matter is ready for trial and it is appropriate that it be now placed on the call-over list. That will at least given it some priority for early resolution, either in a sittings in this Court to be held in late September or a subsequent sittings to be held in mid-October 2002.

Balancing all those considerations, I will accede to both applications.

...

HIS HONOUR: Well now, can I take you to the proposed terms of the order Mr Glen?

...

HIS HONOUR: So, we leave 5 to read, "The parties are to negotiate a fee with the appointed mediator, but such fee is to be paid by the defendants."

HIS HONOUR: Yes, thank you. Are you able to prepare a new draft and have Mr Henry view it and initial it if appropriate.

MR GLEN: Yes, your Honour.

HIS HONOUR: Then I will make orders in terms of that new draft.

...

HIS HONOUR: In addition to that, I order that these actions be placed on the list of matters awaiting trial.

...

HIS HONOUR: I order that costs of each application be costs in the cause.
