



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

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State Reporting Bureau

Date: 13 February, 2003

Claim No 54 of 2003

LESLIE JOSEPH PICKERING

First Plaintiff

and

ALICIA WINIFRED PICKERING

Second Plaintiff

and

TREVOR JOSEPH PICKERING

Third Plaintiff

and

NOEL JAMES PICKERING

Fourth Plaintiff

and

SPINIFEX SPORTS MANAGEMENT AND
PROMOTION PTY LTD

First Defendant

and

CRAIG STEPHEN BAX

Second Defendant

and

JEFFREY MARTIN DILLON

Third Defendant

CAIRNS

..DATE 11/02/2003

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application for the setting aside of a judgment which was entered by the Registrar at the Mount Isa Registry on the 29th of January 2003. That judgment by default was sought by the plaintiffs' solicitors, notwithstanding the solicitors' awareness that the defendant was represented by solicitors and that there had been extensive correspondence between the solicitors seeking an extension of time within which to file the defence.

The relevant chronology dealing with this question really starts on the 8th of January 2003 when the solicitors for the third defendant sought a further extension of time. This was now the fourth time that such an extension had been sought, but the basis of seeking the extension was made clear, mainly that there had been prepared a draft defence which was sought to be settled by senior counsel. The advice went on to say that senior counsel was not expected to return to his chambers until the 20th of January 2003 and that the defence could not be settled until later that month.

On the 8th of January 2003, the plaintiffs' solicitors responded saying they could not agree to the extension, but they would seek instructions, and the letter concluded as follows:

"We anticipate that our client will be reluctant, and unlikely, to look favourably upon the present request.

We shall revert to you with our client's instructions."

A further exchange of correspondence did not change that position. On the 13th of January 2003 the plaintiff's solicitors asked for a copy of the draft defence which was awaiting settlement by senior counsel. I am not sure what benefit it would have been for the plaintiff's solicitors to receive that draft which may have been substantially amended by senior counsel.

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But that letter from the plaintiff's solicitors did indicate that they had received the request by the defendant's solicitors for the extension of time.

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The fulfilment of the plaintiff's solicitors' undertaking to "revert to you with our client's instructions" occurred at 8.59 a.m. on 29 January 2003 when the plaintiff's solicitors advised that the plaintiff would not agree to any extension and then said "In the circumstances we have instructions to proceed to a default judgment."

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In my experience I would have expected that a solicitor writing in those terms and in those circumstances would have indicated a time at which the default judgment would be sought. The response of the defendant's solicitors to that was to reply by facsimile letter transmitted at 10.25 a.m. that day advising that a draft defence would be sent to Mount Isa that day for filing and requesting the plaintiff's solicitors "not to take any steps adverse to our client's interest in the interim."

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If there was an intention on the part of the plaintiff's solicitors to take steps adverse to the interests one would have expected that fact to be communicated, but it was not. Instead the plaintiff's solicitors simply waited without response to that correspondence and late in the afternoon sought the default judgment.

The defendant's solicitors had in fact honoured their intention by posting the draft defence to the Supreme Court but by the time it arrived the judgment had in fact been entered.

The whole of the circumstances indicates to me that there was a lack of proper communication between professional colleagues each aware that their clients wished to litigate the real issues.

Apart from seeking various extensions there was no conduct on the part of the defendant's solicitors which would attract criticism apart from perhaps their failure to e-mail or fax to the plaintiff's solicitors the draft defence which they had sent to Mount Isa.

That was really an unnecessary step in any event because the draft defence, unless it was settled by senior counsel in identical terms, would probably never be relied upon.

My assessment of the situation is that the plaintiff's solicitors acted in a precipitated way without giving adequate

adequate warning to the defendant's solicitors of his
intention to do so. More time was reasonably needed for the
defendant to respond to the advice of the 29th of January 2003
that extension would not be agreed to.

In those circumstances, I would order that the plaintiff pay
the third defendant's costs of and incidental to this
application.

My orders will be:

- (1) the judgment by default be set aside;
- (2) the third defendant will be given leave to defend by
filing and delivering a notice of defence within 14 days
from the date hereof;
- (3) that the plaintiff pay the costs of and incidental
to this application to be assessed on a standard basis.
