State Reporting Bureau

Queensland Government
Department of Justice and Attorney-General

Transcript of Proceedings

REVISED COPIES ISSUED
State Reporting Bureau
Date: 12 June, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Writ No 65 of 1998

JEREMY BURLAND FRANCISCO	Plaintiff
and	
VICTOR FREDERICK WESTON and SUZANNE BARBARA WESTON t/a Coverwell Roofing	First Defendants
GARRY JOHN VAN REES and SANDRA VAN REES t/a North Queensland Roofing Group (N.Q. Roofing Group)	Second Defendants
TAFFY'S HOMES PTY LTD	Third Defendant
MONIER PGH HOLDINGS LIMITED	Third Party

CAIRNS

..DATE 02/06/2003

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 by the first defendant to have the action removed from the Cairns Registry to the Brisbane Registry. The action is, for all intents and purposes, ready for trial and any question of the speed with which a hearing date might be obtained, appears to be evenly balanced between the two locations.

The issue between the parties is whether the trial can be heard more cheaply and more conveniently in Brisbane rather than Cairns. On behalf of the applicant, emphasis is laid upon the fact that all legal representatives of the five parties to this action presently reside in Brisbane and that it is indicated that there will be 10 lawyers having to travel from Brisbane to Cairns for the purpose of the trial which is expected to be of five days duration.

Reference is made to the fact that on liability, three expert engineers have been engaged, each of whom resides in Brisbane and that other potential witnesses from Workplace Health and Safety and a one Mr Liddell, also reside in Brisbane. Those facts indicate that a trial in Cairns would involve fares and accommodation totally of some $20,000 extra because of the movement of those persons.

From the plaintiff/respondent's point of view, the plaintiff and his wife, though now residing in New South Wales, when they come to Cairns would have free accommodation for themselves with relatives. In addition to that, there are

likely to be six witnesses from the Cairns area to be called by the plaintiff. So in terms of number of actual witnesses, the balance is again even, but what distinguishes the difficulty is that the plaintiff does not have the means of providing airfares and accommodation for those witnesses in Brisbane or at least when compared with the means of the three defendants and third party, does not have the same financial capacity to pay for the movement of witnesses.

That then leaves the question of the lawyers. When the plaintiff commenced this action he engaged solicitors in Cairns. There has been a change of solicitors during the course of the preparation for trial, but at all times the plaintiff has proceeded on the basis that the trial would be in Cairns and maintains that attitude.

For the defendants and the third party, the choosing of Brisbane lawyers is simply a matter of choice. It cannot be said that there are not solicitors and barristers in Cairns who are equipped to do the work that is likely to arise in the hearing of this matter, but the defendants have made the choice. That does not therefore weigh heavily when one weighs the relative expenses for each of the parties.

Looking at the matter in total, having regard to the number of witnesses and the financial capacity of the respective parties to have their witnesses attend at the hearing, convenience, expedition and economy favours the retention of the hearing venue at Cairns. The cost of moving lawyers to and from

Cairns is a matter that is taken into account but it does not bear the same level of weight, in my view, that has to be applied to the difficulty it would occasion the plaintiff in raising the necessary finance to acquire airfares and accommodation for his witnesses. For those reasons, it seems to me that the application of the principles underpinning section 289 of the Supreme Court Act, favours the retention of the hearing venue in Cairns.

The second application is made by the plaintiff for an order that the matter be set down for hearing, notwithstanding that the first defendant has not signed the request for trial. Each of the other parties has signed the request and it seems that the reason for the first defendant not signing, was to await the outcome of this application for the change of venue.

Notwithstanding that, it has made necessary the application and in my view, the first defendant ought to pay the costs of the application which I propose to grant, by directing that the matter be set down, notwithstanding the first defendant's failure to sign the request for trial. I indicate that the costs associated with that application seem to be no more than the preparation of the application and supporting material and the filing of same.

...

HIS HONOUR: I propose to reserve the costs of the change of venue application and if it is necessary at the conclusion of the trial, I will hear further argument on them then.

...

HIS HONOUR: I will adjourn the matter now thank you.
