



Transcript of Proceedings

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Date: 23 October, 2003 ✓

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 86 of 1999

VICTOR RONALD TROUGHTON and
MAUREEN TROUGHTON

Respondents
(Plaintiffs)

and

MARTIN BRIGDEN,
MARGARET MCKENZIE and
STEPHEN LEONG

Applicants
(Defendants)

CAIRNS

..DATE 20/10/2003

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: In this matter the applicants applied for orders by paragraph 1 for the delivery of an amended statement of claim, answers to further and better particulars, the provision of a statement of loss and damage, disclosure of statements of the plaintiffs which were referred to in an expert report, and the disclosure of all radiological forms in the plaintiffs' possession.

The applicant seeks further orders for the striking-out of the plaintiffs' claim for want of prosecution and an order for costs. The basis for the order seeking the striking-out of the plaintiffs' claim is the fact that there has been a serious disregard of an order of this Court made on the 3rd of October 2002 which required the plaintiffs to deliver an amended statement of claim and to answer further particulars, and to undertake other steps.

What has happened in that 12 months has been that six months after the non-compliance with that order, the present solicitors referred the plaintiffs to another firm of solicitors. The referral solicitors refused to take up the case and the plaintiffs were referred to a different firm of solicitors. That firm, in turn, refused to act for the plaintiffs. Now the solicitors who appear for the plaintiffs are, indeed, the original plaintiffs' solicitors on the record, but it means that in the time that the file was moving between other solicitors, they did not have the opportunity to comply with the order and with other aspects of the progression of the trial which ought to have been attended to.

That does not provide a complete excuse for the solicitors on the record, since they controlled the plaintiffs' file for some six or seven months before its being referred to other solicitors. It is not clear on the material what is so difficult about taking instructions from the plaintiffs, assessing the strength of the plaintiffs' case, and preparing the documents that are required by the Rules.

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The plaintiff comes before the Court today and seeks an adjournment on the hearing of the application in order to comply, at least, with paragraph 1 of the application namely the provision of those documents. The indication given by Mr Morzone of counsel is that those documents will be provided within 28 days. Given that some of the documents ought to have been provided at least 11 months ago, that is asking for a very significant concession, but it is one in the circumstances which I think ought to be given because the consequences of not providing those documents will be fairly clear. In the absence of any complete and detailed explanation as to why compliance could not be made with those orders that I propose to make, then it will be almost inevitable that the plaintiffs' claim will be struck out.

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Mr Keft, opposing the adjournment, points out that it is now seven years since the cause of action arose, and five years since any constructive step was taken by the plaintiffs. Be that as it may, those arguments will, of course, become relevant and significantly relevant to any application for striking out of the plaintiffs' claim rather than for this

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adjournment which is for a relatively short period with a background of the disruption to the preparation of the plaintiffs' case that I have outlined.

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I will therefore make the following orders:

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(1) That within 28 days from the date hereof the plaintiffs will provide:

- (a) an amended statement of claim;
- (b) answers to the defendants' request for further and better particulars dated 26th of June 2001;
- (c) an up to date statement of loss and damage;
- (d) disclosure of the statements of Victor Ronald Troughton dated the 19th of April 1997 and Maureen Troughton dated the 19th of April 1997 referred to in the report of Dr Stanley-Davies dated 28th April 1998;
- (e) disclosure of all radiological films in the plaintiffs' possession or within the plaintiffs' power.

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(2) That the application is adjourned to the 1st of December 2003;

(3) That the plaintiffs pay the costs of and incidental to the adjournment to be assessed on a standard basis.

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