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Transcript of Proceedings

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State Reporting Bureau
Date: 16 August, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 271 of 2004

WILLIAM JAMES ROYDS

Plaintiff

and

MICHAEL SUMNER-POTTS

First Defendant

and

THE BAR ASSOCIATION OF QUEENSLAND & ORS Second Defendants

CAIRNS

..DATE 12/08/2004

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 a referral from the Registrar who seeks directions concerning his dealing with a request for default judgment filed by the plaintiff on Thursday the 5th of August 2004. The filing of that request is recorded at 3.35 p.m. on that day.

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The concern arises because also on that day the first defendant made a request of the Registry to remain open after the ordinary closure time of 4 p.m. to permit the filing on that day of a notice of intention to defend, and a defence, by the first defendant.

The evidence before the Registrar concerning service appears in an affidavit of Melissa Ann Cox filed also on the 5th of August 2004 which showed that the first defendant was served personally on the 7th of July 2004. That service on that day results in the time within which the defence ought to have been filed in accordance with the rules as being the 4th of August 2004.

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The Registry is, of course, entitled to open at whatever hours may be advised. See rule 976. The rule which the Registrar was required to apply in response to the request for judgment are rules 281 and 284. Rule 137 is the rule that provides for the filing of the notice of intention to defend within 28 days. Rule 138 of the UCPR provides that a defendant, however, may file and serve a notice of intention to defend at any time before judgment, even if the defendant is in default of rule 137. The Registrar was, therefore, authorised to

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receive the notice of intention to defend on the one day past
the period prescribed by rule 137, and he was entitled to
receive that document after the normal closing hours of the
Registry. Having done so, the Registrar could not consider a
request for default judgment.

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Even if the Registrar had a discretion in determining whether
to proceed with the request in circumstances where a notice of
intention to defend, and defence, has now been received, that
discretion would have to be exercised judicially. The most
significant consideration in the exercise of such discretion,
in my view, is in the pursuit of justice for the parties to
have an opportunity to litigate the disputes that have arisen
between them.

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The shutting-off of a litigant who raises, on its face, a
valid defence could not be undertaken in circumstances where
the filing of that defence has been received in advance of the
request for default judgment being dealt with. There is no
basis, in my view, for the Registrar to deal with the request
for default judgment in those circumstances.

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HIS HONOUR: In those circumstances I would direct the
Registrar not to proceed with the request for default
judgment.

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HIS HONOUR: Having been urged to deal with the request myself
I would make the order that the request for default judgment
be dismissed.

There is no order for costs.
