[2019] QCA 110

COURT OF APPEAL

FRASER JA
PHILIPPIDES JA
RYAN J

Appeal No 12173 of 2018
SC No 9148 of 2013

JAMES BOYD THOMPSON **Appellant**

v

CAVALIER KING CHARLES SPANIEL RESCUE (QLD) INC **Respondent**

BRISBANE

THURSDAY, 6 JUNE 2019

JUDGMENT

FRASER JA: The helpful arguments of Mr Thompson and Mr Templeton allow us to make a decision about one question in this appeal now. The question concerns the construction and effect of r 112(1)(e)(ii) of the *Uniform Civil Procedure Rules* 1999 (Qld). That rule provides that:

> "If these rules do not require personal service of a document, the following are ways by which the document may be served on the person to be served –
>
> …
>
> (e) If the person has given –
>
> (ii) an email address under these rules – emailing the document to the person."

In the present case Mr Thompson complied with a requirement under r 17(1)(a)(vi) that he ensure, as one of the details on his originating process, there be his email address. For that reason, r 112(1)(e)(ii) is applicable, because, plainly enough, Mr Thompson has given an email address under the rules. Mr Thompson mentioned that this giving of the email address by him did not amount to a consent to the use of email for service, and he made a number of points in that respect. Nevertheless, r 112(1)(e)(ii) is enlivened for the reason I have given.

Upon the face of that rule, in a case such as the present where personal service of the relevant document was not required, service was affected by it being emailed in accordance with r 112(1)(e)(ii). Mr Thompson argues that that provision is not met by an email to the email address that he ensured was on his originating process, because the rule requires the email to be "to the person". That is not a tenable construction of the rule. It is, of course, a physical impossibility to email a document to a person. The rule makes sense only if it is given the obvious meaning, that the relevant document may be served by emailing a document to the person at the email address given by that person under the rules.

Mr Thompson referred the Court to a number of decisions concerning other legislative provisions about service, which did not contain a requirement or an authority to serve documents at email addresses. None of those decisions bears upon the present point. Mr Thompson also relied upon provisions in s 39 of the *Acts Interpretation Act* 1954 and s 11 of the *Electronic Transactions (Queensland) Act* 2001. Both provisions are facultative. They are not mandatory provisions in a case in which service by email under the rules is specifically authorised by the rules. Neither provision bears upon the proper construction of rule 112(1)(e)(ii).

A further question raised in the argument is when service was affected by emailing the relevant document. There appears to be no ambiguity in the relevant rule that the act of service occurs upon the emailing of the document to a person at the email address under the rules. Accordingly, that is the time of service. Mr Templeton relied upon s 24 of the *Electronic Transactions (Queensland) Act* 2001, which states that:

> "Unless otherwise agreed between the originator and the addressee of an electronic communication–
>
> (a) the time of receipt of the electronic communication is the time the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee."

At least, in the ordinary case that would correspond with the time at which the document is emailed to the person at the electronic address designated by the person. Mr Thompson argued that s 24(1)(a) depended for its operation upon the addressee having access to the appropriate electronic equipment which would enable the document to be received. It is not expressed in those terms. It refers to the communication becoming capable of being retrieved at an electronic address. The question whether the addressee actually has access to the relevant or required equipment is not relevant under the rule, so that if s 24 does apply in this case, it would have the effect of deeming the time of receipt in the way I mentioned.

Upon the text of s 24 and the introductory party of the division in which it is found, it is applicable. Whilst at the moment I do not see a good reason why it ought not to be applicable, it does not seem necessary to decide that it is, in these circumstances, and it is perhaps preferable that a decision on that point be put off to another day. In the result, for the reasons I have given, I would decide the question I have mentioned by holding that the service under r 112(1)(e)(ii) was effective upon the respondent emailing the relevant document to the applicant's email address.

PHILIPPIDES JA: I agree with what Justice Fraser has said.

RYAN J: I also agree.