SUPREME COURT OF QUEENSLAND

CITATION:	*Thompson v Jewiss; Dawson v Jewiss* [2004] QCA 144
PARTIES:	**ERNEST ROY THOMPSON** (plaintiff/respondent) **v** **HENRY WILLIAM JEWISS also known as HARRY JEWISS** (defendant/applicant) **STUART BEVAN DAWSON** (plaintiff/respondent) **v** **HENRY WILLIAM JEWISS also known as HARRY JEWISS** (defendant/applicant)
FILE NO/S:	Appeal No 3806 of 2004 Appeal No 3807 of 2004 DC No 3441 of 2002 DC No 4056 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave to Appeal s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EXTEMPORE ON:	4 May 2004
DELIVERED AT:	Brisbane
HEARING DATE:	4 May 2004
JUDGES:	McMurdo P, Williams JA and Mullins J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Applications for leave to appeal refused with costs to be assessed**
CATCHWORDS:	PROCEDURE – INFERIOR COURTS – QUEENSLAND – DISTRICT COURTS – CIVIL JURISDCITION – PRACTICE – PROCEDURE BEFORE TRIAL – OTHER MATTERS – where applicant sought adjournment of trials to join third party as defendant – where applicant had been given benefit of multiple previous adjournments – where trial had previously been adjourned on grounds of ill health – whether exercise of discretion of learned primary judge was

	so unjust as to warrant granting leave to appeal
	Queensland v J L Holdings P/L (1997) 189 CLR 146, cited *Squire v Rogers* (1979) 27 ALR 330, cited
COUNSEL:	The applicant appeared on his own behalf L D Bowden appeared for the respondents
SOLICITORS:	The applicant appeared on his own behalf Creswicks Lawyers for the respondents

THE PRESIDENT: The applicant is the defendant in these two District Court actions for damages for negligence and/or breach of retainer. The claims are alleged to arise out of the applicant's financial investment advice given to each respondent in the course of a retainer to provide advice on tax minimisation and investment. The proceedings were commenced in August 2002 by claim in the District Court at Brisbane. Each action relates to the applicant's advice as an accountant allegedly given to the respondents commencing in mid 2000. Each respondent claims damages for the professional fees paid to the applicant and further damages for breach of contract or negligence. The applicant in his defence denies that he was asked to advise on tax minimisation and investment, claims that he followed his client's instructions, and states that he was not negligent in either case.

The applicant has now retired from practice as an accountant. He claims he is indigent and in ill-health. He is representing himself in these actions and these applications today.

The trial is listed to proceed in the District Court at Brisbane today. The applicant appears by telephone link from South Australia where I understand he now resides. On 19 April 2004, the applicant applied for an adjournment of each trial to enable him to join Allianz Australia Insurance Limited ("Allianz") as a third party. His Honour Judge McGill SC refused that application. The applicant applies for leave to appeal from that order.

The applicant in affidavit material placed before this Court says that he was covered by professional indemnity insurance with Allianz by policy number 740014392PLP. He says that he has now commenced proceedings against Allianz but he wants an adjournment of these matters so that all issues can be dealt with at the same time. He says that this would be more convenient and would save both time and costs for all concerned. He deposes that he has never given either respondent investment advice or advice outside his professional indemnity insurance policy.

The primary Judge was of the view that as at 19 April it was too late to seek an adjournment to join a third party and that in any case the applicant could pursue that claim later if he wished. It seems, from what the applicant has submitted this morning, that he has now elected to pursue this latter course. In refusing the application for the adjournment his Honour was also influenced by the history of these matters.

The applicant has been given the benefit of multiple adjournments of these trials. The trials were initially set down for hearing in the week commencing 11 August 2003. The applicant requested the respondents' solicitors to adjourn the matters because of his ill-health and suggested that by late September his health may have improved. The respondents consented to this.

The trials were next set down for hearing on 11 and 12 December 2003. Shortly beforehand the applicant again claimed that his health would necessitate an adjournment. His Honour Judge Brabazon QC ordered the adjournment, although with considerable reluctance, expressing reservations as to whether the applicant could in fact travel to Queensland and conduct his trial if given some particular consideration by the trial Judge. That application for an adjournment took place over two days and included the taking of evidence from two doctors. In the end, the adjournment was granted and the matters were next set down for trial in February 2004. The applicant again requested an adjournment which, again, the respondents vigorously contested. After hearing from an alternative cardiologist, his Honour Judge Wylie QC adjourned the matters yet again.

The applicant is a 76 year old retired accountant who, as I have noted, claims to be without assets or funds. He says in his material before us today that he suffers from short-term memory dysfunction as a result of his ill-health. His illness, he claims, has been greatly exacerbated by the

respondents' conduct of the litigation. There is nothing in the material before us which establishes that these factors will improve with more time. The applicant has already had the benefit of multiple adjournments. He has had ample opportunity to consider whether or not he should join his insurers as a third party; until recently he has elected not to do so. The learned primary Judge noted that, if he wishes, he can pursue that claim against his insurers later. He has indicated to us today that he is doing that.

Justice is the paramount consideration in determining whether to grant an adjournment in these circumstances: see *Queensland v J L Holdings Pty Ltd* (1997) 189 CLR 146, Dawson, Gaudron and McHugh JJ at 655, and *Squire v Rogers* (1979) 27 ALR 330 at 337.

After considering all these circumstances, I am certainly not persuaded that the exercise of discretion by the learned primary Judge in refusing to grant the adjournment in each of these cases was so unjust as to warrant the granting of leave to appeal. Indeed, it seems to have been the most sensible course.

In each case, I would refuse the applications for leave to appeal with costs to be assessed.

WILLIAMS JA: Each application is for leave to appeal against the refusal of an adjournment of a trial. The orders were made in the exercise of a judicial discretion. Some of the

issues relevant to an appeal against an adjournment order were mentioned by Justice Deane in Squire v Rogers (1979) 27 ALR 330 at 337. In my view, no basis has been established for granting leave in either of these cases. Each application should be refused with costs.

MULLINS J: I agree.

THE PRESIDENT: That is the order of the Court.