SUPREME COURT OF QUEENSLAND

CITATION:	*Thomson v Mount Isa City Council* [2010] QSC 148
PARTIES:	**VALERIE GINA THOMSON** (respondent/plaintiff) v **MOUNT ISA CITY COUNCIL** (applicant/defendant)
FILE NO/S:	CLS7 of 2006
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Mount Isa
DELIVERED ON:	23 April 2010
DELIVERED AT:	Brisbane
HEARING DATE:	23 April 2010
JUDGE:	Fryberg J
ORDERS:	**1. The parties have leave to call expert witnesses to give evidence by telephone.** **2. The plaintiff deliver an amended statement of loss or damage on or before 14 June 2010.** **3. The defendant submit a request for allocation of trial dates to the Brisbane Registry requesting the allocation of trial dates in the period 14, 15, 16 July 2010 or the period 21, 22, 23 July 2010.** **4. That the costs of and incidental to this application be the defendant's costs in the proceedings** **5. That either party be at liberty to apply on the giving of two clear days notice.**
CATCHWORDS:	Procedure – Supreme Court procedure – Queensland – Procedure under Rules of court – Other matters before trial – Application for court's approval on which expert witnesses to

be called – *Uniform Civil Procedure Rules* 1999 (Qld), r 429 – "may" is not "must"

Uniform Civil Procedure Rules 1999 (Qld), r 429, r 429G

Stewart v Fehlberg & Anor [2008] QSC 203, considered

COUNSEL: B Charrington for the applicant/defendant
No appearance for the plaintiff/defendant

SOLICITORS: Gadens Lawyers for the applicant/defendant
No appearance for the plaintiff/defendant

HIS HONOUR: I have before me what started as an attempted consent order for a number of directions regarding the conduct of the proceedings.

Most of the orders are orders which properly could and should be made. However, the first two of the orders are in the form that the plaintiff and the defendant respectively be permitted to call named persons as expert witnesses. In my judgment the making of such an order is unnecessary. There is no rule which prohibits the parties from calling the experts as witnesses.

There is in Practice Direction 2 of 2005 a requirement that as soon as it is apparent to a party that expert evidence on a substantial issue in a proceeding will be called at the trial that party must file an application for directions. That paragraph further provides that on the hearing of that application the party must inform the Court of the steps taken or to be taken to comply with the rules.

The material before the Court satisfies me that this is an application for directions which is a sufficient compliance with para 5 of the Practice Direction. There is nothing in what has been put before me to suggest a non-compliance with the rules.

Paragraph 6 of the Practice Direction exempts certain expert evidence from para 5. The defendant's witnesses are covered by that exemption and, therefore, for that reason alone, it is

unnecessary to make any order in relation to those witnesses. That, however, should not detract from the fact that a court has a discretion, at all times, to restrict the calling of witnesses if it is felt that excessive numbers of witnesses on the same point are being called by any party. That is regardless of whether the case comes within the sorts of cases covered by para 6 of the Practice Direction.

The form of order proposed seems to presuppose that leave is necessary to call persons as witnesses. On behalf of the defendant, Mr Charrington submitted in his written submissions, that such an order was conventionally sought consequent upon the decision of McMeekin J in *Stewart v Fehlberg & Anor* [2008] QSC 203.

Mr Charrington submitted that his Honour's reasons in that case should be interpreted as meaning that compliance with rr 429S and 429G was mandatory. Those rules are not couched in mandatory terms and I do not read his Honour's judgment as determining that question. Whatever preference his Honour may have indicated as the state of his mind, his decision does not, as I read it, contain ratio decidendi that “may” means “must” in those rules.

In my judgment that would be a wrong interpretation of the rules. The rules are designed to provide an expeditious manner of resolving cases. The parties would be well advised to take advantage of those two rules in the cases to which they apply. The Practice Direction serves to provide the

Court with an opportunity to check up whether the parties have paid proper attention to those two rules and, if necessary, to give directions limiting the witnesses to be called or directing that proceedings be taken under either of those two rules. Unless such an order is made there is no restriction on whom a party may call.

The material before me indicates that there is reason for all of the witnesses who have been named in the two paragraphs of the draft given to me to be called. I see no reason why I should make any order restricting the calling of them notwithstanding that some of the specialties of the doctors overlap and that they may be expressing opinions on similar ultimate issues. This should not be taken as any encouragement to engage in a numbers game of calling multiple experts.

In the circumstances of this case I take into account the age of the litigation, the fact that it was originally to be heard in Mt Isa and had to be adjourned by reason of the plaintiff's unrelated illness and of the fact that it is desirable to bring the matter on with the available evidence as promptly as possible. I see no reason, as I have said, to make any order limiting witnesses or requiring the parties to undertake any step under either of the two rules which I have mentioned.

I will make an order in accordance with para 3 onwards of the draft which has been furnished to me. I will not make an

unnecessary order which implies that permission is needed to call witnesses in court proceedings.
