

SUPREME COURT OF QUEENSLAND

CITATION: *Mitchell v Pacific Dawn Pty Ltd* [2011] QCA 118

PARTIES: **BRUCE JOSEPH MITCHELL**
(appellant)
v
PACIFIC DAWN PTY LTD
ACN 070 358 280
(respondent)

FILE NO/S: Appeal No 8241 of 2010
SC No 3872 of 2001

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 3 June 2011

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: Fraser and Chesterman JJA and Ann Lyons J
Separate reasons for judgment of each member of the Court,
each concurring as to the further order made

FURTHER ORDER: **The proceedings in the trial division in SC No 3872 of 2001 are to be transferred to the Magistrates Court at Brisbane.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – REMOVAL OF ACTIONS TO AND FROM MAGISTRATES COURT – where a judgment delivered by the Court of Appeal resulted in the remaining matters in dispute being within the jurisdiction of the Magistrates Court – where the pleadings in the matter will require amendment – where the trial judge in the Supreme Court has the advantage of familiarity with the matter – where the remaining questions in issue are not especially complex – whether the proceedings should be transferred to the Magistrates Court for final determination

COUNSEL: L D Bowden for the appellant
R Bain QC, with P Tucker, for the respondent

SOLICITORS: Shand Taylor Lawyers for the appellant
Australian Law Group for the respondent

- [1] **FRASER JA:** When judgment was delivered in this matter on 13 May 2011, the Court directed the parties to make further submissions upon the question whether the proceedings in the trial division should be transferred to the Magistrates Court.¹ The parties have made written submissions on that topic. Each accepts that the matters remaining in issue on the claim and counterclaim are within the jurisdiction of the Magistrates Court.
- [2] The appellant argues that the proceedings should remain in the trial division until the trial judge has considered issues of amendments to the pleadings, after which the proceedings should be transferred to the Magistrates Court for final determination. The respondent argues that the proceedings should remain in the trial division so that the trial judge may consider those issues and decide whether or not to transfer the proceedings to the Magistrate Court.
- [3] The basis of those arguments is that the trial judge has the advantage of familiarity with the issues and extensive history of the proceedings. That is so, but the remaining questions are not especially complex. The Magistrates Court has jurisdiction and the proceedings should be conducted at less cost in that court than if they remain in the Supreme Court. There is also a public interest in ensuring that the resources of the trial division are not inappropriately devoted to matters which are within the jurisdiction of the Magistrates Court.
- [4] In my opinion, all questions which remain in the proceedings, including the question whether the appellant requires and should be given leave to amend its pleading to pursue its foreshadowed claim, should be resolved in the Magistrates Court.
- [5] I would order that the proceedings in the trial division in SC No 3872 of 2001 be transferred to the Magistrates Court at Brisbane.
- [6] **CHESTERMAN JA:** I agree with the further order proposed by Fraser JA for the reasons given by his Honour.
- [7] **ANN LYONS J:** I agree with the reasons of Fraser JA and the order proposed.

¹ *Mitchell v Pacific Dawn Pty Ltd* [2011] QCA 98 at [57], [59].