

SUPREME COURT OF QUEENSLAND

CITATION: *Lindsay v Day & Anors* [2011] QSC 207

PARTIES: **SELWYN ORME LINDSAY**
(applicant)
v
IVAN JOHN DAY as TRUSTEE OF THE LAKANUKI TRUST
(respondent)

FILE NO: BS 12921 of 2009

DIVISION: Trial

PROCEEDING: Applications on paper

DELIVERED ON: 21 July 2011

DELIVERED AT: Brisbane

JUDGE: Fryberg J

ORDERS: 1. That the of the signature of the respondent on the Request for Trial Date be dispensed with pursuant to Rule 469 of the *Uniform Civil Procedure Rules 1999*; and
2. That the respondent pay the applicant's costs of and incidental to this application, to be assessed.

CATCHWORDS: Procedure – Supreme Court procedure – Queensland – Procedure under Uniform Civil Procedure Rules and predecessors – Other matters – Applicant filed an application to dispense with the Respondent's signature on a Request for Trial Date
Uniform Civil Procedure Rules 1999, r 469

SOLICITORS: Hickey Lawyers for the applicant.
de Groot's Wills and Estate Lawyers for the respondent.

[1] **FRYBERG J:** The applicant in this matter filed an application on 9 June 2011 to dispense with the respondent's signature on the Request for Trial Date ("Request") pursuant to r 469(4) of the *Uniform Civil Procedure Rules 1999* ("UCPR"). This application is to be heard on the papers. The application has been served on the Respondent's solicitors.

[2] The originating application in this matter was filed on 19 November 2009. The application is to remove the respondent as trustee of the Lakanuki Trust ("Trust") and to appoint the applicant as the trustee. The application also seeks an order for an inquiry in the Magistrates Court at Gympie.

- [3] On 4 November 2010, the applicant requested that the respondent sign the Request. On 5 November, the respondent's then solicitors advised the applicant that they no longer acted for the respondent. New solicitors served a notice of change of solicitor on the applicant on 23 November 2010. They advised the applicant that they were unable to sign the Request until (in effect) they became familiar with the matter. The applicant allowed time for this to happen.
- [4] On 15 April 2011, the applicant requested that the respondent either sign the Request or make a settlement offer (a possibility which he had foreshadowed) by Monday 18 April. The Respondent's solicitor replied on 19 April advising that they were awaiting instructions which involved an offer to settle within a fortnight.

Further letters on 25 May and 6 June have also been unsuccessful in obtaining the signed Request.

- [5] Rule 469 relevantly provides:

“Dispensing with signature on request for trial date

On the application of a party who has signed a request for trial date, the court may dispense with the signature of another party who has been served with the request under rule 467(2) and has not signed and returned it within 21 days after service.”

- [6] The respondent's delay in attending to this matter has been inordinate. The applicant is entitled to have his application progress. The order which is sought should be made. Costs should follow the event

Orders

1. That the of the signature of the respondent on the Request for Trial Date be dispensed with pursuant to Rule 469 of the *Uniform Civil Procedure Rules 1999*; and
2. That the respondent pay the applicant's costs of and incidental to this application, to be assessed.