COURT OF APPEAL

McPHERSON JA

Appeal No 11195 of 2000

GEOFFREY LEE STONE First Respondent (Plaintiff)

and

COPPERFORM PTY LTD
(ACN 011 012 052) Appellant (First Defendant)

and

LKL (QLD) PTY LTD
(ACN 061 413 563) Second Respondent (Second Defendant)

BRISBANE

..DATE 31/01/2001

JUDGMENT

McPHERSON JA: I will give short reasons now. The plaintiff, Mr G L Stone, says he has a claim for damages against the first defendant, Copperform Pty Ltd, and the second defendant, LKL Pty Ltd, or one or other of them for personal injuries sustained in July 1997 in the course of his employment.

He made an application to the District Court seeking leave under the WorkCover Act Queensland 1996 to commence proceedings against the first defendant, Copperform Pty Ltd.
The outcome of the hearing was that the learned District Court Judge did not grant leave to proceed, although he did not refuse it, but instead ordered the first defendant to attend a compulsory conference under s.293 of the Act. It appears from what I have read in the material that at the hearing the plaintiff said he did not require the attendance of the second defendant at that hearing and that the service of the application on that party had been a mistake. However that may be, the order made by the learned Judge did touch the second defendant as well as the first, and in that sense operated on the second defendant.

By notice dated 19 December 2000 the first defendant appealed against the decision given on 8 December 2000 in the District Court, and on 20 December 2000 the first defendant applied to this Court for an order staying that decision in so far as it ordered attendance at the compulsory conference.

The Uniform Civil Procedure Rules in Rule 761(2) confers on this Court a jurisdiction exercisable by a single Judge to stay

any part of a decision that is "subject to an appeal". For a person to qualify for a stay under this rule, therefore, there must be an appeal. Appeals to this Court from decisions in the District Court are governed by s.118 of the District Courts Act 1967. By s.118(2), there is a right of appeal against a final judgment. Otherwise by s.118(3) leave is required from either this Court or the Court below in order to appeal.

No such leave has been obtained or even formally sought in this case. It follows that, unless the decision below is a final judgment, there is in this instance no appeal without the grant of leave and accordingly nothing that could be described as a decision "subject to an appeal" in terms of UCPR 761(2).

By no process of reasoning can an order to attend a conference be considered a final judgment. The order decided nothing final or otherwise about the rights of the parties. Indeed, its purpose was, I suppose, to see if they could agree on something rather than have it decided by the Court. That state of affairs remains so even if the application for leave to proceed is included in what I have said. In fact, his Honour does not seem to me to have disposed of that application either by granting or refusing it, whether favourably or otherwise, to any of the parties. It may be that his failure to deal with it has the effect of adjourning it to another day, but I do not say that is its effect.

The distinction between a final and an interlocutory order for the purposes of maintaining an appeal against it has always

been a difficult one. Some of the authorities and considerations involved are referred to in ex parte Britt [1987] 1 Qd.R. 221. But it is beyond question here that the order that was made to attend a compulsory conference was not a final order susceptible of appeal to the Court from the District Court without leave. No such leave has been sought or obtained and, on any view of the matter, the application is therefore not within the terms of UCPR 761(2), which requires that the decision sought to be stayed be "subject to an appeal". I therefore dismiss the application.

...

McPHERSON JA: That application was, as I said in my reasons, misconceived having regard to the form of the rule; and in my view the application should be dismissed with costs against the applicant, who is the first defendant, in favour of both respondents to the application.
