

# DISTRICT COURT OF QUEENSLAND

CITATION: *Bell v Levy & Ors* [2001] QDC 089

PARTIES: **NEVILLE DICKSON BELL**  
**Plaintiff**  
**v**  
**REBECCA LEVY, MARK NORMAN AND ROBERT BROWN**  
**(t/a PROPHET LODGE RACING STABLE)**  
**Defendants**

FILE NO/S: D 3298 of 2000

DIVISION: Civil Jurisdiction

PROCEEDING: Chamber application

ORIGINATING COURT: Magistrates Court

DELIVERED ON: 4 May 2001

DELIVERED AT: Brisbane

HEARING DATE: 4 May 2001

JUDGE: Judge Forde

ORDER: **That the defendant Rebecca Levy pay to the plaintiff the amount of \$16,796 together with interest on that sum and costs of and incidental to the proceedings including the application made on 4 May 2001**

CATCHWORDS: Summary judgment – ss 283, 288 *Uniform Civil Procedure Rules* – Refusal by Registrar to sign judgment – other relief apart from liquidated damages in claim

COUNSEL: Mr. A. Deane for the Plaintiff  
No appearance for the Defendants (ex parte)

SOLICITORS: Clayton Utz for the plaintiff  
No solicitors for the defendant

- [1] This is an application to the Court pursuant to Rule 288. The applicant/plaintiff applied for judgment before the Registrar who refused judgment on the basis that the request for judgment under Rule 283 did not comply with the Uniform Civil Procedure Rules in that the claim is not one for a debt or liquidated sum.

- [2] The pleadings reveal that the claim was for moneys owing for agistment of horses together with a declaration that the plaintiff is entitled to a lien over the property of the defendants. Before me the claim for a declaration is abandoned.
- [3] Technically the judgment was not available under Rule 283 on the face of the pleadings. The material which would have been relied upon would have been available to the respondent Rebecca Levy and if she had been properly advised it may be that she was informed that summary judgment under Rule 283 would not have been available.
- [4] Of course she would not have been aware that that relief was to be abandoned on the summary application. However, it is clear that the claim is otherwise a claim for liquidated sum in that there was a relevant charge per horse for agistment fees over a period of time. Some moneys were paid pursuant to that arrangement. In fact the parties entered into a deed of compromise in December 2000.
- [5] The terms of that compromise were that the respondent Rebecca Levy and others acknowledged the debt of \$21,796. A certain payment has been made in particular the sum of \$5,000. In the event that there was further default of payments then upon the filing of an affidavit stating the balance of the unpaid moneys judgment was able to be entered in the proceedings against Levy for the balance of such moneys together with costs and interest pursuant to clause 2.2(f) of the deed.
- [6] In effect there was a compromise of the action and the applicant is entitled to seek judgment in the action based upon the agreement between the parties. The

appropriate rule in my view is that Rule 288 is applicable given the particular circumstances of this case.

- [7] The order will be in terms of the draft and that is that the defendant Rebecca Levy pay to the plaintiff the amount of \$16,796 together with interest on that sum and costs of and incidental to the proceedings including the application made on 4 May 2001.