

MAGISTRATES COURTS OF QUEENSLAND

CITATION: *Print Management Facilities Australia Pty Ltd v Why Not Connect 3 Pty Ltd & Anor* [2023] QMC 9

PARTIES: Print Management Facilities Australia Pty Ltd (Applicant)
v
Why Not Connect 3 Pty Ltd (Respondent)
&
Melissa Jane Davin

FILE NO/S: 2033/22

DIVISION: Magistrates Courts

PROCEEDING: Application (without oral hearing)

ORIGINATING COURT: Brisbane Magistrates Court

DELIVERED ON: 27/06/2023

DELIVERED AT: Brisbane

HEARING DATE: 27/06/2023 (On the papers)

MAGISTRATE: Pinder

ORDER: 1. Pursuant to Rule 116 of the *Uniform Civil Procedure Rules 199*:

- a) personal service of the Claim and Statement of Claim filed on 18 October 2022 be dispensed with in respect of the second defendant; and
- b) in lieu of personal service on the second defendant, a copy of the Claim, Statement of Claim and a copy of the Order made in this application (**Documents**) be served by:
 - i. emailing the Documents to melissa@starrtec.com.au and melissa@whynotconnect.com.au;
 - ii. posting a copy of the Documents by ordinary pre-paid post to 1008/18 Longland Street, Newstead QLD 4006; and
 - iii. sending the below text message to the mobile number 0401 997 812:

“We act for Print Management Facilities Australia Pty Ltd. We have delivered a claim and statement of claim to your email addresses melissa@starrtec.com.au and melissa@whynotconnect.com.au, and to 1008/18 Longland Street, Newstead QLD 4006. A copy of the documents can also be obtained by contacting Sasha Legal on (07) 3185 2404.”

2. The Claim and Statement of Claim shall be taken to have been served 7 days after compliance of paragraph 1(b) above.
3. The plaintiff’s costs of this Application be its costs in the cause.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SERVICE – IN LIEU OF PERSONAL SERVICE – SUBSTITUTED AND INFORMAL SERVICE – Where there is an application for substituted service – Where the applicant elected to have the application heard on the papers – Where evidence is inadmissible – Where impracticality of personal service on demonstrated in any event

LEGISLATION: *Uniform Civil Procedure Rules 1999* rr 116(2), 295, 430(2)

CASES: *NAB v Garner* [2022] QDC 221

Foxe v Brown (1984) 58 ALR 542

Miscamble v Phillips & Hoeflich (No 2) [1936] St R Qd 272

SOLICITORS: Sasha Legal for Plaintiff

Reasons for Decision

- [1] The applicant plaintiff seeks a substituted service order pursuant to Rule 116 of the *Uniform Civil Procedure Rules* (UCPR).
- [2] The applicant seeks to proceed *ex parte*, that is without the application being served, which is obviously understandable in light of the relief sought.
- [3] The application seeks a decision without oral hearing pursuant to r. 489.
- [4] The applicant has complied with the requirements of r. 490 UCPR including attaching a notice in the approved form and accompanying the application with a draft order and written submissions in support.

Substituted Service

- [5] The application is pursuant to r. 116 UCPR which provides:
- (1) If, for any reason, it is impracticable to serve a document in a way required under this chapter, the court may make an order substituting another way of serving the document.
 - (2) The court may, in the order, specify the steps to be taken, instead of service, for bringing the document to the attention of the person to be served.
 - (3) The court may, in the order, specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time.
 - (4) The court may make an order under this rule even though the person to be served is not in Queensland or was not in Queensland when the proceeding started.
- [6] The threshold question is that the applicant demonstrate that it is impractical to personally serve the proceedings on the defendant.
- [7] That test has been described in these terms – “furthermore the question is not whether reasonable effort has been shown by the plaintiff over a particular period but whether at the date on which the application for substituted service is made the plaintiff, using reasonable effort, is unable to serve the defendant personally.”¹
- [8] Once the threshold question is established, the courts discretion under r. 116(2) is enlivened. The discretion must be informed by the purpose of substituted service which is to bring the proceedings to the attention of the other parties. Substituted service is not a way to meet the formal requirements of service without affecting actual notice of the proceedings. If a party cannot be found, or if no reliable form of communication of the documents to the defendant is established, then the proceedings cannot progress.²
- [9] There must be a high degree of probability proved on the evidence that the proceedings will come to the attention of the other party by the method of service ordered.
- [10] “It is not proper to substitute service of process in a court of law when there is no belief that the service will bring the proceedings to the knowledge of the person in question or any person representing his interest.”³

The Applicant’s Evidence

- [11] The applicant has filed and relies upon the following affidavit:
- R Chamala filed 15/05/23

¹ *Foxe v Brown* (1984) 58 ALR 542 at 547

² *NAB v Garner* (2022) QDC 221, Porter KC DCJ

³ *Miscamble v Phillips and Hoeflich (No 2)* [1936] St R Qd

- M B Thomas filed 15/05/23
 - M B Thomas filed 15/05/23
- [12] The affidavit of Mr Chamala purports to rely on evidence in this substituted service application which has been given on an information and belief basis (that is evidence comprising admissible hearsay evidence from the deponent).
- [13] The two affidavits of Mr Thomas give direct evidence of his numerous attempts to serve the second defendant .
- [14] R. 430(2) UCPR permits such evidence to be adduced but only if certain requirements pursuant to the rule are met.
- [15] R. 430 provides as follows:
- (1) Except if these rules provide otherwise, an affidavit must be confined to the evidence the signatory for the affidavit could give if giving evidence orally.
 - (2) However, an affidavit for use in an application because of default or otherwise for relief, other than final relief, may contain statements based on information and belief if the signatory for the affidavit states the sources of the information and the grounds for the belief.
- [16] The requirements of the rule are:
- i. The source of the statement must be able to give admissible original evidence of the fact asserted.
 - ii. The deponent must sufficiently identify the source of the statement.
 - iii. The deponent must state their belief in the statement.

Disposition

- [17] There is admissible evidence in the affidavits relied upon by the applicant to satisfy the court that at the date on which this application for substituted service has been made, the plaintiff using reasonable efforts detailed in those affidavits, is unable to serve the defendant personally.
- [18] That threshold condition having been established the discretion to order substituted service is enlivened.
- [19] The evidence in the affidavit relied upon by the applicant establish that the proposed means of substituted service will bring the proceedings to the knowledge of the defendant. The application for substituted service is allowed and I make orders in terms of the draft orders initial and placed with the file.

Magistrate Pinder

27/06/23