

TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF QUEENSLAND

No 99 of 1987

CIVIL JURISDICTION

DEMACK J

BARBARA FRANCES POSTLE

Plaintiff

and

RODNEY ARNOLD LUDLOW

Defendant

ROCKHAMPTON

..DATE 12/03/93

JUDGMENT

HIS HONOUR: Upon the matter resuming this morning Mr Britton advised me that the plaintiff had given notice of acceptance in writing of an offer to settle made on behalf of the defendant on 2 March 1993. He sought that the terms of the offer be incorporated in a judgment in accordance with Order 26 rule 7 sub-rule A which reads, "Where an offer to settle is accepted the Court may incorporate any of its terms into a judgment." It seems to me that that sub-rule is designed to cover cases other than those where the offer is simply for the payment of a sum of money. Where the offer is simply for the payment of a sum of money, there are no terms that need to be incorporated in the judgment.

Without wanting to discuss matters that do not arise here, it would seem to me that that sub-rule is directed more towards the situation that may arise in other kinds of actions such as injunctions or declarations. Consequently,

I do not believe here that it is necessary to enter judgment on behalf of the plaintiff.

The offer was made in writing and the acceptance was made in writing so that, in all respects, the provisions of order 26 have been complied with up to this point. However, there is one further matter that does need attention. The defendant has died since the institution of proceedings and the action has been defended by the third party insurer. It seems to me desirable at this stage to protect the plaintiff's rights by ordering that the third party insurer be joined as a second defendant.

It does not seem to me to be necessary to make any orders for consequential amendments to pleadings because the matter has now been settled on the basis of an offer made, in effect, by the third party insurer. I order that FAI General Insurance Co Limited be joined as a second defendant in the action. The action is adjourned to the settlement list.

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