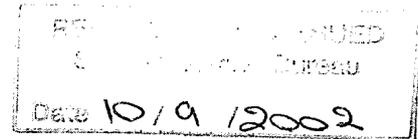




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[2002] QSC 328

## Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 39 of 2002

AARON DANIEL FINN

Plaintiff

and

JAKEMAN CONSTRUCTIONS PTY LTD  
ACN 056 027 911

Defendant

CAIRNS

..DATE 05/08/2002

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application for the setting aside of a judgment by default obtained by a plaintiff who sues for damages for breach of contract, negligence, and breach of statutory duty.

The defendant has indicated a desire to defend the action and would, in the ordinary course of events, have notified the solicitors for the plaintiff to this effect. The problem was that the judgment by default was entered at approximately the same time as the defendant's solicitors were able to obtain instructions. This was brought about essentially because the persons involved with defending the claim are somewhat separated by distance. The defendant's registered office is on the Sunshine Coast, the director of the defendant resides in Mount Isa, and the defendant's insurer in Sydney, and the relevant solicitor practices in Brisbane. By the time consideration was given to the claim by those various actors in those diverse places the time for filing a notice of intention to defend had past.

It can be said, and it is accepted by the respondent to these proceedings, that there was no inordinate delay in the hands of any person who had to deal with this claim on its way to the solicitors being finally instructed. That position seems to be accepted by the plaintiff who does not now oppose the setting aside of the judgment entered by default.

In all the circumstance it seems to me that this is the appropriate course. I am referred to a decision of Justice

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McPherson in National Mutual Life Association of Australasia Ltd v. Oasis Developments Pty Ltd (1983) 2 Qd.R. 441, where at p.449 he said,

"It is not often that a defendant who has an apparently good ground of defence would be refused the opportunity of defending even though a lengthy interval of time has elapsed provided that no irreparable prejudice is thereby done to the plaintiff."

In the circumstances of this case there is really no lengthy interval of elapsed time, and the plaintiff has indicated by the very appropriate attitude he has adopted that there is no prejudice.

In all the circumstances I make the following orders.

Judgment by default entered by the plaintiff on the 22nd of April 2002 be set aside. I order that the defendant pay the plaintiff's costs of and incidental to this application, and the costs of entering judgment be assessed on the standard basis.

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