



Transcript of Proceedings

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State Reporting Bureau
Date 17/10/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 17 of 2001

STEVEN SEAN CACCHIA

Plaintiff

and

WILLIAM CARL RUNGERT and
SUNCORP INSURANCE AND FINANCE

First defendants

and

COUNCIL OF THE SHIRE OF JOHNSTONE

Second defendant

and

STATE OF QUEENSLAND

Third Party

CAIRNS

..DATE 14/10/2002

JUDGMENT

As corrected

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HIS HONOUR: This is an application on behalf of the second defendant for judgment to be entered against the plaintiff because of his failure to provide adequate particulars as required by an order of this Court made on the 12th of February 2002.

Following the making of that order, the plaintiff purported to give particulars, but they were, in my judgment, inadequate. The particulars which were sought pursuant to paragraph 4 of a request dated November 2001, were in five respects as follows:

- a) The approximate amount of gravel on the roadway;
- b) Whether the gravel was scattered across the roadway, or whether it had accumulated in a particular area;
- c) If the gravel had accumulated, specify its location;
- d) Whether the gravel was on the bitumen surface or the road shoulder; and
- e) The description and size and nature of the gravel.

That was the request for particulars which was ordered to be answered. The plaintiff's response to that was to reply, "The plaintiff says the police attended the accident and provided a report, which noted the presence of gravel, its spread and location."

That response is wholly inadequate, given that the request was made so that the defendants would be able to obtain expert reports on the presence of the gravel and its likely

involvement in causing the plaintiff's vehicle to go out of control.

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The plaintiff has an obligation to provide particulars of the circumstances in which it says the defendant's conduct caused the incident. If that requires the plaintiff to make inquiries of witnesses, and then if he intends to rely on the evidence of those witnesses, he needs to provide particulars of the circumstances upon which it does rely. The plaintiff will be bound on the hearing of the case by the particulars furnished.

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One would expect that the plaintiff would have sought expert opinion himself, particularly given the intimation from the defendants that they intend to seek expert evidence going to these matters.

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As I have indicated, the plaintiff's response is wholly inadequate. Rather than entering judgment it seems to me appropriate to grant an extension of time, within which the plaintiff may provide adequate particulars, given the purpose for which those particulars are sought.

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I will not repeat what I said in my reasons for the decision delivered on the 12th of February 2002, but they remain apposite to this question.

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I order that the period of time within which the plaintiff shall provide particulars be extended to the 6th of December 2002.

I will adjourn the further hearing of the second defendant's application to the 13th of December 2002, with the intimation that if adequate particulars are not provided, the plaintiff will need to be in a position to show cause why judgment should not be entered on that date.

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HIS HONOUR: I order that the plaintiff pay the costs of the defendants of and incidental to this application to be assessed on the standard basis. I direct however, that the execution of the order for costs be stayed until at least a further hearing of the matter on the 13th of December 2002.

...

HIS HONOUR: I allow the third party costs of and incidental of the application on the same terms.

Mr Ryall, your application to set the matter down for trial does not have any prospects, does it?

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HIS HONOUR: That application too will be adjourned to the
13th of December 2002 and there will be no special order for
costs in relation to that application.

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JUDGMENT