



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MOYNIHAN J

No 9213 of 2002

DONALD WILLIAM FRETWELL

First Plaintiff

and

JUDD WILLIAM FRETWELL

Second Plaintiff

and

COLIN DAVID HODSON

Defendant

BRISBANE

..DATE 16/10/2002

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 to transfer an action to this Court from the District Court and then for leave to take a further step in the action pursuant to rule 389(2). There are then to be further directions for the conduct of the action. I will turn to those later.

The cause of action is a consequence of events which occurred on the 27th of August 1995 and the proceedings were commenced in the District Court on the 26th of August 1997. The defendant filed its affidavit of documents on the 22nd of October 1998. That was the last step in the action.

The explanation proffered for the delay is a combination of impecuniosity on the part of the plaintiffs and the state of the first plaintiff's health as a consequence of the injuries that he suffered in the accident. The accident arises out of an aircraft crash; the relevant considerations being whether the defendant exercised the appropriate level of skill and care in the circumstances.

The defendant, as it has been described, stands alone. In other words, he will have to meet out of his own funds the proceeds of any judgment against him. I accept that that is a consideration which bears on the granting of leave.

Bearing in mind the considerations canvassed by the Court of Appeal in Tyler v. Custom Credit Corporation Limited and Another 2000 QCA (CA) 178, the case is a borderline one. But on balance, I think it is appropriate to grant leave to take a

further step in the action. The plaintiffs' damages are
arguably in excess of the District Court limit. The action
should be transferred here.

It is incumbent upon the plaintiffs to progress the matter to
resolution with all due expedition. Further delay, unless
there is some compelling contrary consideration, may well lead
to the action being dismissed for want of prosecution. In
that context, the plaintiffs need to strictly comply with the
directions which are to be given here.

As a formality, it seems that the plaintiff needs leave to
amend the claim to increase the amount of damages to that
within the jurisdiction of this Court. I give that leave.

...

I give the defendant leave to file and serve an amended
defence within 14 days and the plaintiffs to file and serve a
reply within seven days.

...

The plaintiffs to file and serve an updated statement of loss
and damage within 14 days of the amended defence being filed
and served.

...

That each of the parties file an updated affidavit of documents within 14 days of the service of the reply.

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I order that the plaintiffs pay the respondent defendant's costs of and incidental to this application to be assessed.

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JUDGMENT