



Transcript of Proceedings

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Date: 16 August, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No S342 of 2004

COREY JOHN LEFEL

Applicant

and

VICTOR ANTHONY RUSSO

First Respondent

AND

SUNCORP METWAY INSURANCE LIMITED
(ACN 075695 966)

Second Respondent

CAIRNS

..DATE 13/08/2004

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: On the 28th of July 2004 the applicant instituted proceedings in this Court seeking orders to be relieved of certain obligations upon him, pursuant to the Motor Accident Insurance Act 1994.

The orders sought included that the applicant have leave to commence proceedings, that the compulsory conference be dispensed with, or that the time and place for the holding of a compulsory conference fixed, and that the time for bring the proceedings be extended.

The parties have reached agreement on all of the matters raised by the application, save for the question of the costs of the application itself.

The applicant seeks an order that the second respondent pay the costs of bringing the application. It does so on the basis that the second respondent could have, if it wished, extended the time by consent without the need for an application to be made at all.

The background to this dispute is that the applicant had, on an earlier occasion, received the indulgence of the second respondent in extending time to meet the provisions of the Act, but again he needed the further indulgence of the second respondent and if not forthcoming, the indulgence of the Court.

The circumstances whereby the application could have been avoided at all were really in the hands of the applicant by complying with the legislative provisions. Having failed to do that, of course, the applicant must seek the indulgence of either the insurer or come to Court and seek indulgence there.

There is no obligation on the second respondent to give the consent which the applicant sought of it for the second time. And the fact that the second respondent gave his consent after the institution of the application does not mean it becomes liable to pay the costs which were thrown away. Indeed it may have well been open to the second respondent itself to seek its costs, although prospects of doing so in all the circumstances might well have been limited.

Considering questions of obligation, and what makes necessary the application to the Court, leads me to the view that there should be no order for cost.

MR PHILP: Thank you, your Honour.

HIS HONOUR: I therefore make orders in terms of the draft initialled by me and placed with the papers.

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HIS HONOUR: The precise terms in which I have made the order, that each party bear their own costs.
