[2004] QSC 349

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Date: 13 September, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 85 of 2001

RAY MOLONY . Applicant (Plaintiff)

and

FRED MARSH PTY LTD Respondent (Defendant)

CAIRNS

..DATE 07/09/2004

JUDGMENT

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: This is an application made by the plaintiff that I should disqualify myself from hearing any further applications and particularly hearing the trial of the matter. It is made on the basis that there might in the minds of a party or a fair-minded observer the entertainment of a reasonable apprehension of bias or prejudgment.

The circumstances in which this matter came to be considered is that the plaintiff wrote initially to the Registrar of the Court and made the request with that outcome. When that was drawn to my attention I said the application had to be made in open Court and the basis of the application shown.

What is relied upon is the long history of applications in this case where the plaintiff has been unsuccessful before me in most, if not all, of them. The first of these related to an application by the defendant in which I ordered that security for costs be given, and I stayed the whole action because the remaining part of the action made by the plaintiff personally was for $6,400. The Court of Appeal found that there was no basis upon which that order could be made and I readily understand and know that, but it was simply to avoid the prospect of a claim for $6,400 proceeding on its own in the Supreme Court rather than it being sought to be dealt with as a separate trial and being remitted elsewhere.

Following that and more significantly was a number of applications relating to pleadings. The list of these and the dates on which they have been made have been set out in

paragraph 8 of the affidavit of Mr Khatri filed on the 6th of September 2004. I think all told there have been some six applications, or certainly at least six attempts to amend the statement of claim, which amendments have been opposed for various reasons and the opposition has been upheld. My last order in that respect was that there should be no further amendment to the statement of claim without leave being granted. That order was made simply to avoid the parties being visited with the unnecessary expense of having contested applications, but that matter was appealed also and although the appeal was not proceeded with the parties to the appeal agreed to allow an amended statement of claim to go forward. It was not a result that could have been achieved by an application to Court.

Notwithstanding that, and conscious of the fact that no Judge can adopt the approach that he or she should ultimately disqualify himself or herself simply at the request of the party, I feel that I ought to do so on this occasion. I do so because of the number and frequency of the applications, and perhaps because in my reasons for determining those applications there may have been seen a sense of frustration that the applications were coming before me with the regularity with which they did.

It is clear that associates of the plaintiff have expressed concern, and indeed one of them had done so in a most improper way which has been drawn to the attention of the parties.

But ultimately it is a matter for me to decide. It is not the case that I am automatically standing aside because I have been requested to do so. I am doing so really because of the frequency with which applications that come before me and have been decided against the plaintiff. Perhaps that could or may cause a fair-minded observer to entertain a reasonable apprehension of bias or prejudgment. I have attempted not to give that impression but I do acknowledge that someone might entertain such a reasonable apprehension. It is on that basis that I have taken the decision that I should disqualify myself, but I can assure the parties that it is not a decision that I have made lightly given the circumstances of my being the sole Supreme Court Judge sitting regularly in Cairns.

It is a factor in my decision that the defendant will not be inconvenienced by my having so decided, because for the balance of this year there will be three visiting Supreme Court Judges here for very short periods, and in the first half of the year 2005 there will be three, and perhaps four, Judges visiting Cairns during my absence on leave. That would mean that any needs of the parties for interlocutory applications can be entertained without inconvenience to any one of them.

I therefore allow the application.
