[2006] QSC 340

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ROBIN A/J

No 1794 of 2001

JODIE LEE ROGERS	Plaintiff
and	
BODY CORPORATE FOR THE NUT TREE GROVE COMMUNITY TITLES SCHEME 26041	Defendant
and	
LIFETIME SECURITIES (AUSTRALIA) PTY LTD	Third Party

BRISBANE

..DATE 01/11/2006

ORDER

CATCHWORDS: second defendant's signature of request for trial date dispensed with under UCPR r 469(4) after 21 days should it not sign within that time - signature withheld because its solicitor had been unavailable to inspect documents about a recently revealed motor vehicle accident in which the plaintiff injured her lower back and obtained a settlement - that accident occurred less than 10 months before the incident underlying the claim, in which there was a serious neck injury.

HIS HONOUR: This is essentially a squabble about costs. The second defendant has declined to sign a request for trial date and essentially because time pressures consequent upon time lost because of the September/October school holidays have stood in the way of Mr Newport availing himself of any opportunity to inspect documents held by the plaintiff's solicitors.

While sympathetic to practitioners called on to take steps in litigation in the Christmas/January period, I have much less experience of a similar indulgence being thought necessary at other holiday times, the plaintiff and her solicitors have not shown any particular understanding of Mr Newport's difficulties.

What he wishes to inspect are documents, in particular an insurance file, in respect of a motor vehicle accident which resulted in involvement of solicitors and a settled claim. That accident happened on the 3rd of December 1998, less than 10 months before the accident which underlies this proceeding. It occurred on the 28th of September 1999 when the young plaintiff fell down some stairs in a building.

Mr Trotter described the later accident as resulting in the plaintiff breaking her neck, but it may not be just to hold anyone to that description. It rather appears that the earlier accident resulted in an injury to the lower back and a modest settlement.

I must say I find it completely astounding that in conditions of modern litigation that earlier accident would not have been disclosed. It appears that nothing surfaced in relation to it until about May of this year, around the time of an unsuccessful mediation, when there were medical reports making reference to it.

Mr Newport has been careful to cast no aspersions against the plaintiff for the late emergence of information about the earlier accident and claim. But, speaking for the Court, I must say I find it troubling.

Mr Newport, of course, labours under the disadvantage of not having had the time to inspect relevant documents, which have been available since about 18 September 2006. It may well be, as he acknowledges, that nothing of significance emerges from them. One can understand his reluctance to sign the request for trial date until he has seen the documents. There seems to be a just complaint open against him and his firm regarding a lack of response to correspondence. Maybe the school holidays played a role here.

The Court's order will be that the second defendant's signature of the request for trial date be dispensed with under Rule 469(4) if, within 21 days from today, the second defendant has not signed it, provided that any inspection of documents required by the second defendant shall have been made available.

I order that the plaintiff's costs of and incidental to the application be her costs in the cause against the second defendant.

I understood Mr Trotter to be seeking an immediate order for costs. I make the one I do in deference to the possibility that the proceeding against the second defendant may prove to be misconceived.

It was initially brought in as a third party on an assertion, now apparently embraced by the plaintiff too, that it was responsible for an allegedly defective light switch in the relevant stairwell. Its case is that there was nothing wrong with that switch or the stairwell and that the claim against it has no proper foundation at all.
