

IN THE SUPREME COURT OF QUEENSLAND Writ No. 4268 of 1986

FULL COURT

BEFORE:

The Chief Justice (Sir Dormer Andrews)

Mr. Justice Macrossan

Mr. Justice McPherson

BRISBANE, 26 AUGUST 1987

BETWEEN:

ANTHONY RONALD REES JUDD and DENISE (Plaintiffs)  
ANNE JUDD Respondents

-and-

SUNCORP INSURANCE AND FINANCE (Defendant) Appellant

JUDGMENT

THE CHIEF JUSTICE: In this matter an order was made by Mr. Justice de Jersey, who is in charge of the "A" list of Commercial Causes, on 15 April 1987. He ordered that the action with which we are concerned be set down for trial for four days from 21 August 1987 and made a number of other incidental orders, including the requirement that no later than 14 days before the 21st day of August 1987 each party deliver to the other an abstract of the evidence proposed to be given by any expert witness.

The defendant, Suncorp Insurance, decided to appeal against that order.

Now, in the first place it is apparent that the only question to be put forward here as to the merits of the appeal related to privilege, thus to be claimed, as to the contents of certain documents which had already been discovered by the appellant to the respondent before the appeal was instituted. We are told by counsel for the appellant that at the time the appeal was lodged it was not clear that further reports would be included in evidence, an abstract of which was to be given. However, the appeal that was lodged asked that the whole of the order be set aside. Furthermore, it is apparent that the order made did not require the contents of documents to be disclosed. What was ordered was the delivery of an abstract of evidence proposed to be given by any expert witness.

It has emerged, according to counsel for the appellant, that the documents referred to were reports by engineers, as were the further reports about which it was not revealed until 20 August that evidence in them was not proposed to be brought forward at the trial. But this to my mind really adds nothing to the matter. Having regard to the nature of the order made it seems to me that the appellant had not really an arguable case at all on appeal, or one which had any prospects whatever of success. It is in those circumstances that we are asked to dispose of the question of costs of the appeal.

I think that there is nothing further that I, speaking for myself, need say in order to support a decision that the respondent should have costs of this appeal which we are in fact asked to dismiss because the appellant does not propose to proceed further with the matter. The action itself commenced to be heard on Friday last and it still continues.

I would therefore order that the appeal be dismissed and that the appellant pay the respondent's costs of the appeal to be taxed.

MR. JUSTICE MACROSSAM: I agree. There is nothing in particular which I wish to add to the reasons already stated. I think it has been sufficiently shown that in this case on the withdrawal of the appeal it is appropriate that the respondents should have their order for costs.

MR. JUSTICE McPHERSON: I agree.

THE CHIEF JUSTICE: Orders accordingly.

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