IN THE SUPREME COURT OF QUEENSLAND

Appeal No. 149 of 1987
Rockhampton
Writ No. 60 of 1982

FULL COURT

BEFORE:

Mr. Justice Kelly S.P.J.

Mr. Justice Macrossan

Mr. Justice Derrington

BRISBANE, 3 MARCH 1988

BETWEEN:

RONALD MARTIN HOWLAND and ELIZABETH JOAN HOWLAND — (Plaintiffs) Appellants

-and-

REGINALD CLARENCE NIXON and SHIRLEY MARGARET NIXON — (Defendants) Respondents

ORDER

MR. JUSTICE KELLY: This is an appeal from an interlocutory, order made by the Central Judge on 15 September 1987 granting leave to the respondents to deliver a rejoinder. The application for that leave was made on the first day of the trial and after granting the leave, following further argument, the learned judge adjourned the action back to the callover and ordered that the defendants

- that is the present respondents pay the plaintiffs' costs thrown away by the adjournment.

The rule under which the learned judge was proceeding was o.27 r.2 which sets out, “no pleading subsequent to reply, other than a joinder of issue, shall be pleaded without leave of the court or a judge and then shall be pleaded only upon such terms as the court or judge shall see fit.” The learned judge observed, referring to the substance of the pleading that was before him, and as to which leave was sought to deliver it, that some of the paragraphs in it do no more than join issue with pleadings made in the amended reply, which at that stage was almost three years old, and he observed that merely putting them in that form does not add anything new. The learned judge went on to point out that “Other matters, however, involve issues or allegations of issues of fact which certainly had not been previously raised.” His Honour then said, “It seems to me that although regrettable the defendants should at this stage be allowed to raise these issues of fact so that there can be a final determination of what issues are in fact between the parties. So I will allow for delivery of the rejoinder, subject to whatever conditions arise from the very late nature of the pleadings.”

As is apparent, the granting or refusal of an application for the leave sought was a matter for the discretion of the learned trial judge, and the principle in relation to appeals from the exercise of such a discretion requires that ordinarily this Court would not interfere unless it was satisfied that there had been some wrong principle applied, or that for some reason the exercise of the discretion was manifestly wrong. Those principles are set out in House v. The King and other decisions of the High Court.

Applying those principles, I am quite unable to see, despite the able argument addressed to us by Mr. Crowley Q.C., that it has been shown that there was any basis upon which the Court should interfere with the discretion of the

learned trial judge. As I have said, in allowing for the delivery of the rejoinder at that stage, His Honour then went on to make an order for costs against the respondents to whom leave had been granted.

In my view there is no proper basis on which this Court should interfere with the exercise of the learned judge's discretion and I would dismiss the appeal with costs.

MR. JUSTICE MACROSSAN: I agree.

MR. JUSTICE DERRINGTON: I agree.

MR. JUSTICE KELLY: The order of the Court is that the appeal is dismissed with costs.