

PARTIES: Taylor and Mildren Silvester &
Partners Pty Ltd

TITLE OF COURT: In the Supreme Court of the
Northern Territory of Australia

JURISDICTION: Interlocutory Application

FILE NO.: 566 of 1989

DELIVERED: 14 September 1995

REASONS OF: Master Coulehan

CATCHWORDS:

PRACTICE - Northern Territory - amendment -
declaration - no basis for claim after payment

PRACTICE - Northern Territory - interest - s84
Supreme Court Act - no sum for which judgment may
be given - interest may not be included

Representation:

Counsel:

Plaintiff Mr Lindsay
Defendant Ms Kelly

Solicitors:

Plaintiff Messrs Cridlands
Defendant Messrs Philip & Mitaros

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

566 of 1989

BETWEEN:

ROBERT TAYLOR

Plaintiff

and

MILDREN SILVESTER & PARTNERS

PTY LTD

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 14 September 1995)

Following my reasons for decision delivered on 17 August 1995 the defendant has applied by summons to have the particulars upon which the plaintiff's claim for interest pursuant to s84 of the Supreme Court Act is based, struck out. The particulars are as follows:-

"3. Interest pursuant to s.84 of the Supreme Court Act. Further, and in the alternative the plaintiff suffered loss by way of interest lost on his entitlements at the rate of 12% simple interest for the whole period of the loss."

S84(1) of the Supreme Court Act reads as follows:-

"In any proceeding in respect of a cause of action that arises after the commencement of this Act the Court may order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of that sum for the whole or any part of the period between the date when the cause of action arose and the date of the judgment."

It is pleaded that the entitlements referred to in paragraph 3 were subsequently received by the plaintiff. This occurred after the issue of the writ.

The person who paid them is not identified.

The plaintiff's claim is for damages for loss of use of the entitlements. It is argued on behalf of the defendant that as the plaintiff is not claiming, and will not receive, any sum by way of judgment for these entitlements, interest pursuant to s84 is not claimable in respect of them.

The plaintiff has applied to amend his statement of claim by adding, inter alia, a claim for a declaration that he is entitled to damages in the sum of his entitlements being \$150,738-02. This amendment is opposed.

While the plaintiff may have been able to claim damages in the sum of his entitlements prior to the sum being paid, there is no basis for alleging that he is entitled to such damages after payment. There are no grounds upon which the declaration sought may be made.

The plaintiff also seeks to incorporate the claim for interest and the particulars in the proposed amended statement of claim. This is also opposed.

There does not appear to be any basis for such a claim. S84 refers to interest on the sum for which judgment is given. If judgment is not given for any sum in respect of the entitlements there can be no interest included.

Leave is granted to the plaintiff to file and serve an amended statement of claim in the form of the draft amended statement of claim annexed to the affidavit of Alan John Lindsay sworn on 6 September 1995 with the deletion of paragraphs 3 and 6 of the plaintiff's claim for relief.

I am not sure it is necessary that there be any order on the defendant's summons filed on 30 August 1995. I will adjourn that summons to a date to be fixed with liberty to apply.