

PARTIES: Taylor v 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: 17 August 1995

REASONS OF: Master Coulehan

CATCHWORDS:

PRACTICE - Northern Territory - particulars of
statement of claim - claim for lost opportunity -
need for evidence - all particulars plaintiff
capable of providing

Cases followed:

Commonwealth v Chessel 30 FCR 154
Higgins v Weekes (1889) 5 TLR 238
Hungerfords v Walker 171 CLR 125
Marshall v Inter Oceanic Steam Yachting Co.
(1885) 1 TLR 394
Shaw v Commonwealth NT Supreme Court Judgments
(1993) Vol 2 p. 1284

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

Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 17 August 1995)

The plaintiff claims damages for breach of contract and negligence caused by the failure of the defendant to appeal a decision of the Board of the Territory Insurance Office to the effect that the plaintiff was not entitled to benefits under the **Motor Accidents (Compensation) Act.**

The proceeding was commenced by writ on 5 September 1989 and the defendant appeared on 29 August 1990.

It appears from the amended statement of claim that the plaintiff received the benefits to which he claims he was entitled by payments made on 29 March 1992 and 20 October 1992. He claims damages for the loss of use of that money.

A plaintiff may recover damages for being deprived of the use of money paid away or withheld by reason of a defendant's breach of contract or negligence (see **Hungerfords v Walker** 171 CLR 125.) However, there must be evidence or consequential loss actually suffered (see **Commonwealth v Chessell** 30 FLR 154 and

Shaw v Commonwealth N.T. Supreme Court Judgments
(1993) Vol. 2 p. 1284).

The plaintiff has provided particulars under three broad headings viz. moneys borrowed, lost opportunity and interest pursuant to s84 of the Supreme Court Act. There is no dispute as to the damages claimed under the first heading.

The parties provided under the heading "Lost Opportunity" read:

"(i) The plaintiff suffered damage in losing the opportunity to earn interest on his entitlements, through such investments as he may have been advised to take, at previously commercial interest rates being bank overdraft rates as set out hereunder." (There follows a list of interest rates).

"(ii) Had the Plaintiff received his entitlements when he should have he would have been able to avail himself of the opportunities that existed at that time for the establishment of a buffalo farming business.

"PARTICULARS

"The Plaintiff cannot provide particulars as to the profits such business may have generated."

The defendant says that these particulars are insufficient, the defendant being entitled to know in more detail as to what opportunities were available.

It is submitted on behalf of the plaintiff that he has provided all the particulars he is able to provide. The plaintiff's case is that had he received the moneys to which he was entitled he would have invested them in order to obtain the best return, including the establishment of a buffalo farming business.

While I have reservations as to bank overdraft rates being the appropriate measure of his loss, the extent of his loss, if any, is a matter for evidence and argument.

As I understand that plaintiff's argument, he has provided the best particulars he can give. In those circumstances an order requiring further particulars should not be made (see Higgins v Weekes (1889) 5 TLR 238 and Marshall v Inter Oceanic Steam Yachting Co. (1885) 1 TLR 394).

The defendant also argues that the plaintiff's claim for interest on lost entitlements pursuant to s84 of the Supreme Court Act is unsupportable and should be struck out.

There is no formal application and the plaintiff's solicitor was not prepared to meet the argument. In these circumstances, it is not appropriate that I determine the issue at this time. I will adjourn this application to a date to be fixed.

I make no further order as to particulars in relation to the defendant's application by summons filed on 23 June 1995.