(tho95025)

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

SC No. 69/94
(9407863)

BETWEEN:

WOODLEIGH NOMINEES PTY LTD
ACN NO. 050 120 057 as
TRUSTEE of the CASEY FAMILY TRUST
First Plaintiff

and:

WALTER EDWARD CASEY
Second Plaintiff

and:

CORAL ELIZABETH CASEY
Third Plaintiff

and:

GEOFFREY EDWARD CASEY
Fourth Plaintiff

AND:

CBFC LEASING PTY LTD
Defendant

CORAM: THOMAS J

REASONS FOR DECISION

(Delivered 8 December 1995)

This is an appeal by the plaintiffs from a decision of the Master delivered on 2 November 1995.

The decision delivered was as follows:

> ".... The plaintiffs claimed damages for the alleged wrongful seizure of certain mining machinery. The issues appear to be whether the machinery was subject to hire purchase agreements which were void and what damages flow from the seizure. It's possible the plaintiffs were alleging other wrongs committed by the defendant, however this is not clear because they do not form part of the

prayer for relief.

> The plaintiffs have administered interrogatories which comprise 33 pages and approximately 480 questions. These interrogatories are objectionable on the grounds of prolixity alone. Further, few, if any, appear to relate to a question between the parties.
>
> The court is not required to go through interrogatories of this kind in order to assess which are not objectionable. See American Flange & Manufacturing Company Inc v Rheem (Australia) Pty Ltd (No 2) [1965] NSWR 193 and 196; Hughes v Western Australian Cricket Assn Inc (1986) ATPR 40-726.
>
> I order that the plaintiffs interrogatories for the examination of the defendant be set aside."

An appeal from the Master is a hearing de novo; "the party who was the applicant before the Master begins; the appeal is determined on the evidence placed before the judge and is unfettered by the Master's decision, though such weight may be given to his decision as appears proper. The relevant facts are to be determined as at the date the appeal is heard;" (*Southwell v Specialised Engineering Services Pty Ltd* (1990) 70 NTR 6 Kearney J at 8).

Accordingly, the defendant in these proceedings, who was the applicant before the Master, proceeded first with the application by the defendant that the plaintiffs interrogatories for the examination of the defendant be set aside.

In the substantial action between the parties the plaintiffs claimed damages for the alleged wrongful seizure of machinery used in the plaintiffs' mining ventures. The issue between the parties is that the plaintiffs' claim the machinery was the subject of a hire purchase agreement and the defendant breached the *Hire Purchase Act* 1978 (NT) in respect of the said agreement. The defendant claims the machinery was the subject of a lease agreement between the parties, not a hire purchase agreement.

On 19 September 1995, the plaintiffs filed interrogatories for the examination of the defendant. These interrogatories

comprise 33 pages with approximately 480 questions.

The defendant objects to answering the interrogatories on the grounds of objection provided in rule 30.07 which states:

> " (1) A party interrogated shall answer each interrogatory except to the extent that it may be objected to -
>
> (a) because it does not relate to a question between him and the interrogating party;
>
> (b) because it is unclear or vague or is too wide;
>
> (c) because it is oppressive;
>
> (d) because it requires him to express an opinion which he is not qualified to give;
>
> (e) on the grounds of privilege; or
>
> (f) on any other ground on which objection may be taken.
>
> (2) Without limiting subrule (1)(a), an interrogatory that does not relate to a question includes an interrogatory the sole purpose of which is to -
>
> (a) impeach the credit of the party interrogated;
>
> (b) enable the interrogating party to ascertain whether he has a claim or defence other than that which he has raised in the proceeding; or
>
> (c) enable the interrogating party to ascertain the evidence by which the party interrogated intends to prove his case, including the identity of witnesses.
>
> (3) A party may not object to answer an interrogatory on the ground that he cannot answer without going to a place which is not his usual place of residence or business if the interrogating party undertakes to pay the reasonable cost of his going there, unless the Court otherwise orders."

I agree with the submission made by Ms Porter, counsel for the defendant, that a substantial number of the interrogatories are not relevant to the issues between the parties. Without attempting to analyse every interrogatory, I have selected the following as examples of interrogatories which have no relevance to the issues between the parties:

"Item No.8(a) Please explain why it would not be prudent to introduce the SA/NT office to the Caseys at that time.

(b) Please explain why did the Defendant's Sydney office attempt to transfer the files to the SA/NT office.

(c) Please explain why a copy of the file was held in Adelaide.

(d) Please explain what was the intended purpose of this action.

Item 41 (c) Please advise how were the ages of Casey family members quoted in Para 3 ascertained.

(d) Please advise the relevance of the ages of Casey family members quoted in Para 3.

(e) Please advise when, if at all the recommended CRAA listing was made against.

Item 54 (a) Please advise the reason why legal action was commenced in Sydney in the Local Court instead of being commenced in the Local Court in Darwin."

Some of the interrogatories are unclear or vague. Again, without attempting to include every interrogatory which is objectionable on that basis, I have selected the following examples:

"Item 11 (v) Please advise precisely (including time frame employed) the details of "normal procedure" as referred to in Item 11.

Item 14 (j) Please advise precise details of Supreme Court action being taken by N.T. Administration in conjunction with Qld. Administration."

This is a case which will be argued very much on the basis of the documents constituting the agreement between the parties. I consider it is oppressive for the plaintiff to request the defendant to answer 32 pages of interrogatories, largely relating to matters outside the issues between the parties. I apply the principle in *White & Co. v. Credit Reform Association AND Credit Index, Limited* (1905) 1 KB 653 at 659:

> "Now there is one general principle underlying the whole law as to interrogatories, namely, that they must not be of such a nature as to be oppressive, and to exceed the legitimate requirements of the particular occasion."

Mr Geoffrey Edward Casey, the fourth plaintiff in these proceedings, submits that the point of interrogatories seeking the names of certain officers of the bank and their position, is to ascertain if they had exceeded their authority in making a decision to instigate repossession of the machinery.

An example of such interrogatories are as follows:

"Item 47 (a) Please advise name of author of hand written note on lower right hand corner of Pinkerton's invoices.

(b) Please advise the address of the author of hand written note on lower right hand corner of Pinkerton's invoices.

(c) Please advise the position held by the author of the hand written note on lower right hand corner of Pinkerton's invoices.

(d) Please advise precisely the extent of authority exercised by the author of the hand written note on lower right hand corner of Pinkerton's invoices."

Without attempting to mention all of the interrogatories that fall into this category, other examples are interrogatories numbered as Items 52, 56, 58, 75, 87, 89, 90, 97, 113, 114, 126 and 127. The defendant company is responsible for the actions of its employees or agents. On the present state of the pleadings, it is not to the point whether an individual employee exceeded his or her authority. I consider such interrogatories are irrelevant and oppressive.

I apply the principle expressed in *American Flange & Manufacturing Co Inc v Rheem (Australia) Pty Ltd (No.2)* [1965] NSWR 193, Myers J at 196:

> " It was established under the earlier English rules that interrogatories which were prolix and oppressive or unnecessary could be disallowed as a whole, even though some of them were proper, and that the Court was not required to go through interrogatories of that kind and ascertain which were admissible and which were not. It was also established that the Court was entitled to come

> to the conclusion that interrogatories were of the kind specified on a general view of the interrogatories and indeed that the mere obligation of the opposite party and the Court to go through the interrogatories and pick out from a large number that were improper the comparative few that were allowable, was itself unreasonable and itself could constitute oppressiveness. It has been contended that that principle does not any longer apply because the English rules have been altered. But the Annual Practice for 1965 and *Halsbury's Laws of England* at the page to which I have earlier referred treat the practice as still being observed in England notwith-standing the alteration of the rules. It is, too, within my own personal knowledge that the practice established by the earlier cases has always been followed in this Court. Indeed, it was followed as recently as 1962 by Jacobs, J., in *Lamerand v. Lamerand (No. 3)*, [1962] N.S.W.R. 1223."

I find that the interrogatories are largely irrelevant, some are vague and unclear and their prolixity makes them oppressive.

I agree with the decision of the Master that the plaintiff's interrogatories for the examination of the defendant be set aside and I would dismiss the appeal.

I will hear the parties on the question of costs.