

PARTIES: John Fulton & Peter Maugeri  
v  
Luigi (aka Gino) Antonino & DJM Developments  
Pty Ltd

TITLE OF COURT: Supreme Court of the Northern Territory

JURISDICTION: Interlocutory Application

FILE NO: 69/96 (9608961)

DELIVERED: 6 June 1996

REASONS OF: Master Coulehan

**CATCHWORDS:**

PRACTICE - Northern Territory - O.1.13 Supreme Court  
Rules - corporation taking a step without solicitor

PRACTICE - Northern Territory - O.23.02 Supreme Court  
Rules - defence - application to strike out - embarrassing

Cases followed:-

Bay Marine Pty Ltd v Clayton Country Perspectives Pty Ltd  
(1986) 6 NSWLR 104

**REPRESENTATION:**

Counsel:

Plaintiff: Mr Spazzapan

Solicitors:

Plaintiff: David Francis & Associates

Mr Antonino for the Defendants.

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

69/96 (9608961)

BETWEEN:

JOHN FULTON and PETER MAUGERI

Plaintiffs

and

LUIGI (a.k.a. GINO) ANTONINO and

DJM DEVELOPMENTS PTY LTD

Defendants

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 6 June 1996)

The plaintiffs' claim is for damages for breach of contract to provide sub-contract building works. It is pleaded that the contract was between the plaintiff and the first defendant, the works to be provided to the first defendant "and/or the second defendant."

While it is pleaded in the alternative that the second defendant repudiated this contract, it is not explained how the second defendant may be liable for damages arising out of a contract between the plaintiffs and the first defendant.

The statement of claim appears to have other vices. It is not clear as to what work was carried out prior to the alleged repudiation, nor is it pleaded that extra works were carried out. There appears to be no material facts which support the damages claimed as particularised.

An appearance has been entered by the first defendant on behalf of himself and the second defendant. He is a director of the second defendant.

The first defendant has filed a defence by which he alleges, inter alia, he was acting as a director of the second defendant and that the contract was between the plaintiffs and the second defendant. I note that the filing of the defence was in breach of O.1.13 which provides that a company cannot take a step in a proceeding except by a solicitor.

The plaintiffs have applied to have the defence struck out under O.23.02. The first defendant appeared on the hearing of the application on behalf of both defendants and he was given leave to appear for the second defendant for the purposes of the application.

The defence is embarrassing. The defendants have made no attempt to directly meet the allegations made in the statement of claim so that it is not clear what has been admitted or denied. Further, some paragraphs of the defence contain allegations in the form of argument and evidence.

The defendants should be given an opportunity to plead with sufficient clarity, however before this is done the plaintiff should consider amending its statement of claim.

The second defendant should be aware of the requirements of O.1.13 and should either engage a solicitor or make application for dispensation. Such an application would need to be supported by evidence of exceptional circumstances to justify the order (see **Bay Marine Pty Ltd v Clayton Country Perspectives Pty Ltd (1986) 6 NSWLR 104**).

It is ordered that the defence be struck out and this application adjourned for 14 days to enable the plaintiffs to consider amendments to the statement of claim. The proceeding will be stayed in the interim.