

PARTIES: SMITH, David
v
YUELAMU CATTLE COMPANY PTY LTD
TITLE OF COURT: SUPREME COURT (NT)
JURISDICTION: SUPREME COURT (NT)
FILE NO: 33 of 1991
DELIVERED: Darwin 3 December 1992
HEARING DATE: 19 November 1992
JUDGMENT OF: Martin J.

CATCHWORDS :

Practice - NT - Interrogatories - Application for order that there be further and better answers - Where Corporation interrogated - Answers to be made by person who can properly respond on behalf of Corporation -

Supreme Court Rules, 0.30

Commercial Bank of Australia Ltd v Whinfield (1920) VLR 225, applied.

Practice - NT - Interrogatories - Objection to interrogatory on grounds of oppressiveness - To state in what respect oppressive - "oppressive" -

Supreme Court Rules, 0.30

Aspar Autobarn Cooperative Society v Dovala Pty Ltd (1987) 74 ALR 550, at 554-5, applied.
White & Co v Credit Reform Association (1905) 1 KB 653, at 659, applied.

Practice - NT - Interrogatories - Whether interrogatory fails to relate to question between the parties -

Supreme Court Rules, 0.30

REPRESENTATION:

Counsel:

Applicant: J Carney
Respondent: D Avery

Solicitors:

Applicant: Buckley & Stone
Respondent: Central Land Council

Judgment category classification:
Court Computer Code:
Judgment ID Number: mar920030
Number of pages: 25

DISTRIBUTION: LOCAL / GENERAL

mar920030

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 33 of 1991

BETWEEN:

DAVID SMITH
Plaintiff

AND:

YUELAMU CATTLE COMPANY PTY LTD
Defendant

CORAM: MARTIN J.

REASONS FOR JUDGMENT

(Delivered 3 December 1992)

The plaintiff applies for an order that the defendant provide further and better answers to certain interrogatories (r30.09) upon the ground that the answers given were not sufficient. Subject to other paragraphs of the rule, any party may serve interrogatories on another party relating to any question between them in the proceedings (r30.02(1)).

"Question" is defined in r109 as meaning a question, issue or matter for determination by the Court, whether fact or law or of fact and law, raised by the pleadings or otherwise at any stage of a proceeding by the Court, by a party or by a person, not a party, who has sufficient interest. However, not all questions put by way of interrogatories must be answered in that

the party interrogated shall answer each interrogatory except to the extent that it may be objected to on any of the grounds specified in r30.07. They are:

- (a) the interrogatory does not relate to any question between him and the interrogating party;
- (b) the interrogatory is unclear or vague or is too wide;
- (c) the interrogatory is oppressive;
- (d) the interrogatory requires him to express an opinion which he is not qualified to give;
- (e) privilege.

It is provided in subr(2) of r30.07 that an interrogatory that does not relate to any 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 proceedings;
- (c) enable the interrogating party to ascertain the evidence

by which the party interrogated intends to prove his case, including the identity of witnesses.

In general terms an interrogatory must be directed to a question in the proceedings such that an answer to the interrogatory may enable the party interrogating to advance his own case or to destroy or impeach the case of the party interrogated.

It is therefore necessary to turn to the pleadings with a view to defining the issues which have arisen between the parties in the proceedings. By its Statement of Claim endorsed upon the writ the plaintiff alleges that by an agreement made in about January 1975, the defendant agreed to employ him as an employee and then as a consultant at the Mt Allan Cattle Station in the Northern Territory. Particulars are given that the agreement was partly oral, being made by conversations that took place between the parties during the period 1976 to 1986, and insofar as it is said to have been in writing it was contained in or evidenced by minutes of the annual meeting of the directors of the defendant company during the period 1986 to 1990. It is then alleged that on 27 June 1986 the defendant employed the plaintiff for a further three years as a consultant, and that on 3 July 1989 the defendant renewed the plaintiff's employment as a consultant for a further three years. As to those two periods of employment, it is alleged that it was an express term that the plaintiff be entitled to a fee of \$15 per hour, a fee

of 45 cents per kilometre while using his vehicle for the defendant's business, that the defendant would pay the "CPI increase" for each of the years of employment until the plaintiff ceased employment with the defendant, and that the period of employment would be for a period of three years. It is then alleged that the defendant wrongfully, and in breach of the agreement, terminated the plaintiff's employment on 16 August 1990. The plaintiff's claim is for damages "By reason of the matters foresaid the plaintiff has been deprived of the said salary and conditions he would have otherwise earned and has thereby suffered loss and damage". There is no claim for any monies said to be payable by the defendant to the plaintiff in respect of a period prior to the termination of his employment.

In response to a request for further and better particulars, the plaintiff said that he was initially employed as an employee/manager, but that he ceased his employment in that role in about January 1977, and then became a consultant, and reference is made to an "employment contract as a consultant". One of the requests for particulars required the plaintiff to state: "what salary" he claims to be entitled to and the answer is "\$82,320 salary (consultancy fees) plus \$1,320 comprising invoice numbers 18 and 19 dated 11 and 12 August 1990 and rendered to the defendant company. Plus adjustments in accordance with the CPI index, full particulars whereof will be provided prior to trial". When asked to state precisely the

period for which the plaintiff claims that he has been deprived of salary, the answer is 17 August 1990 to 3 July 1992. The ambiguity and confusion of language employed on both sides only serves to confuse the issue as to just what was the nature of the contract between them at the relevant time or times.

By way of defence, the defendant puts in issue the various allegations made in the Statement of Claim asserting that insofar as a contract or contracts for consultant services exists, the contract or contracts were not between the plaintiff and the defendant, and asserts that the plaintiff acted as an agent for Honeysuckle Pty Ltd, and that if any contracts were entered into, then they were entered into between the company and the defendant. Alternatively, the defendant says that insofar as there was any contract or contracts for consultant services with the plaintiff, they were impliedly "surrendered" by the plaintiff and the defendant, "..... in return for the defendant entering into a new contract or contracts for consultant services with Honeysuckle Pty Ltd". The defendant also says that its directors are illiterate and relied upon the plaintiff to explain the terms of the alleged contract to them, but that they did not understand those terms and did not intend that the defendant should enter into a contract on those terms.

There are also pleas which seek to raise estoppels against the plaintiff. Finally the defendant says that if there was any contract with the plaintiff it was an implied term that the plaintiff would at all times hold a permit entitling him to enter

and be upon certain Aboriginal lands under the *Aboriginal Land Rights (Northern Territory) Act* and that he did not hold such a permit. It does not appear that any further and better particulars have been sought from the defendant as to its defence.

The interrogatories which are said not to have been sufficiently answered and the answers given are set out hereunder together with the rulings in respect of each of them:

Q. 1. Annexed hereto and marked with the letter "A" is a copy of a document headed "Yuelamu Cattle Company Pty Ltd Minutes of Directors Meeting held at Mt Allan Station, Friday 28th June, 1986 (sic) at 11am". In respect of Annexure "A", state:

(a) If annexure "A" is a true copy of the Minutes of a Meeting of Directors of the Defendant held at Mt Allan Station on Friday, 27th June, 1986.

A. 1. (a) ***I do not know if it is a true copy.***

It is no proper answer to an interrogatory delivered to a corporation for its officer or person authorised by it to simply answer "I do not know". The party interrogated must answer each interrogatory specifically by answering the substance of it, except insofar as it is objectionable on any

of the grounds referred to in the rules. Insofar as a corporation is interrogated, the answer made on its behalf should be by a person who is in a position to obtain and carefully weigh all the information available with respect to the matter enquired after (*Commercial Bank of Australia Ltd v Whinfield* (1920) VLR 225). Rule 30.05(1) (e) and (g) obliges the person authorised by the company to make all reasonable enquiries to determine whether any person has knowledge of the fact or matter which was acquired by that person in the capacity of its servant or agent, and if that is the case, what the knowledge is. It does not appear that either the company or the person answering the interrogatories, Don Morton, a director of the defendant company, have paid sufficient regard to their respective obligations under the rules. It is no answer to say, as counsel for the defendant said upon the hearing of this application, that the person who swore the affidavit in answer to the interrogatories is illiterate. It is up to the defendant to find somebody who can properly respond to the interrogatories on its behalf.

Q. 1.(b) If the Meeting of Directors held at Mt Allan Station on Friday, 27th June, 1986 was a duly convened meeting. If not, state why it was not duly convened.

A. 1. (b) ***I do not know if the meeting referred to was duly convened.***

The same comments as made above in respect to 1(a) could be applied here. However, what is called for is an opinion which I do not think Mr Morton is qualified to give. The interrogatory raises a question of law and is not in proper form with a view to ascertaining whether or not a meeting of directors of the defendant was "duly convened".

Q. 2. Annexed hereto and marked with the letter "B" is a copy of a document headed: "Yuelamu Cattle Co Pty Ltd Minutes of the Meeting of Directors held at Mt Allan Station Monday, 3rd July, 1989". In respect of Annexure "B", state:

(a) If annexure "B" is a true copy of the Minutes of a Meeting of Directors of the Defendant at Mt Allan Station on Monday, 3rd July, 1989.

A. 2. (a) ***I do not know if it is a true copy.***

See comments as to 1(a) above.

Q. 2. (b) If the meeting of directors held at Mt Allan Station on Monday, 3rd July, 1989 was a duly convened meeting of directors? If not, state why it was not duly convened.

- A. 2. (b) ***I do not know if the meeting referred to was duly convened.***

See the comments as to 1(b) above.

- Q. 7. Was a meeting of directors and shareholders of the Defendant held on 16 August, 1990? If so, state:

(a) the name of each director of the Defendant who attended at the meeting;

(b) the name of each shareholder who attended at that meeting;

(c) the name of each person who was not a shareholder or director who attended at that meeting;

(d) the name of the person who convened the meeting and every step or action that was undertaken in order to convene the meeting.

- A. 7(a) - (d) ***I object to answering 7(a) to (d) inclusive as they seek the identity of witnesses.***

Rule 30.07(2)(c) provides that an interrogatory that does not relate to a question includes an interrogatory the sole purpose of which is to enable the interrogating party to

ascertain the evidence by which the party interrogated intends to prove his case, including the identity of witnesses. It is not clear that the question here has the sole purpose of enabling the plaintiff to ascertain the identify of the defendant's witnesses. The plaintiff alleges that his services were wrongfully terminated on 16 August 1990. No particulars have been sought as to what is meant by "wrongfully". The plaintiff may be contending that the decision to terminate his services was not properly taken in accordance with the procedures of the company as required by law. In those circumstances the names of the persons and the capacities of those persons who attended the meeting relates to the question of wrongful termination.

No other objection is taken to the answering of the remaining parts of the interrogatory.

Q. 7. (e) if it was resolved at the meeting to terminate the services of the Plaintiff, and if so, further state:

(i) each and every service that was provided by the Plaintiff to the Defendant;

(ii) each date on which the Plaintiff provided services to the Defendant;

(iii) the date when the Defendant first engaged the services of the Plaintiff;

(iv) how the Defendant engaged the services of the Plaintiff;

(v) each term of engagement of the Plaintiff's services by the Defendant and the date or dates when each term was agreed;

(vi) the amount of money that was paid to or on behalf of the Plaintiff by the Defendant in consideration for the Plaintiff's services;

(vii) in full, the reasons for terminating the services of the Plaintiff.

A. 7. (e) *I refer to clause 6 of the Defendant's Defence.*

It was resolved at that meeting that Mr Didi Smith and Honeysuckle Pty Ltd would not from that date be retained to provide consultant services to Yuelamu Cattle Co Pty Ltd.

(i) - (ii) I object to answering interrogatories 7(e) (i) and (ii) as they are vague, prolix and oppressive.

This is an objection to answering the interrogatory.

The rules do not permit an objection on the basis that the interrogatory is "prolix". However, it connotes oppressiveness and will be treated as meaning no more than that. An objection that an interrogatory is vague goes to the form of the interrogatory, that is, where its meaning is not plain. The interrogatory thus objected to does not however fall into that category. The objection that the interrogatory is oppressive is not in itself sufficient. It should state in what respect it is oppressive (see for example Woodward J. in *Aspar Autobarn Cooperative Society v Dovala Pty Ltd* (1987) 74 ALR 550 at 554-5). The stated grounds of objection are not good.

(iii) I am not aware of the date but I am informed that Mr Didi Smith may have been first appointed by the Defendant sometime in 1976. The Defendant is not aware of the exact date.

(iv) Not known, but I believe decisions to appoint consultants were made by the Directors at a meeting held at Mt Allan Station also attended by Mr Didi Smith, members of the Department of Aboriginal Affairs, Directors of the Australian Agricultural Consulting and Management Co and others on 18 May 1976.

These answers appear to be adequate and no particular argument was put as to why the order sought ought to be made in respect of them.

(v) Not known and incapable of proper reply in any event and objected to as vague and oppressive.

It is not sufficient for the defendant to say he does not know. See above as to the defendant's obligations. The interrogatory is not vague and there are no grounds given as to why it is oppressive.

(vi) Oppressive and vague. It would be an unjust burden on the Defendant to search for such financial records back to 1976 and not seemingly relevant.

The interrogatory is not vague. The defendant has given its grounds for claiming that it is oppressive. To be oppressive means that answering the interrogatory would prejudice or cause hardship to the party interrogated in a way not justifiable by the legitimate requirements of the case (*White & Co v Credit Reform Association* (1905) 1 KB 653 at 659). The further objection that the question is "not seemingly relevant" does not fall within the grounds of objection enumerated in

r30.07. Assuming, however, that the defendant means to say that the question does not relate to a question between it and the plaintiff, (r30.07(1)(a)) then it would be a good objection.

The plaintiff's claim is for damages for breach of contract represented by his prospective loss.

(vii)The interrogatory is irrelevant. Neither Mr Didi Smith nor Honeysuckle Pty Ltd was an employee of the defendant. I refer to and repeat my answer to question 7(e).

The answer appears to have nothing to do with the question. In answer to interrogatory 7(e), the defendant firstly says that it was resolved at the meeting of 16 August 1990 that the plaintiff and Honeysuckle Pty Ltd would not from that date be retained to provide consultant services to the defendant. The plaintiff's claim being for damages for breach of contract, how can it be said that the interrogatory is irrelevant if read as meaning not relating to a question between the parties? The answer is not sufficient.

Q. 7. (f) If it was resolved at the meeting to terminate the services of Honeysuckle Pty Ltd and, if so, further state:

(i) each and every service that was provided by

Honeysuckle Pty Ltd to the Defendant;

(ii) each date on which Honeysuckle Pty Ltd provided services to the Defendant;

(iii) the date when Honeysuckle Pty Ltd first provided services to the Defendant;

(iv) how the Defendant engaged the services of Honeysuckle Pty Ltd;

(v) each term of engagement of the services of Honeysuckle Pty Ltd by the Defendant and the date or dates when each term was agreed;

(vi) the amount of money that was paid to or on behalf of Honeysuckle Pty Ltd by the Defendant in consideration for the services provided by Honeysuckle Pty Ltd;

(vii) in full, the reasons for terminating the services of Honeysuckle Pty Ltd.

A. 7. (f) ***I refer to and repeat my answer to question 7(e).***

(i) - (ii) Interrogatory 7(f) (i) and (ii) are objected to as being oppressive and relevant.

(iii) Not known but possibly from 1980.

(iv) Not known, but I believe by decision of the Directors.

(v) The interrogatory is objected to as ambiguous in its use of the word engagement, and because it assumes a single engagement.

(vi) Oppressive. The defendant has no access to the financial records of Honeysuckle Pty Ltd.

(vii) Irrelevant. I refer to and repeat my answer to question 7(e) (vii).

Although the defendant did not clearly raise the objection in its answers to the questions contained in interrogatories 7(f) (in fact it has chosen to attempt to answer some of them), it is obvious that these questions do not relate to a question between the plaintiff and the defendant.

Honeysuckle Pty Ltd is not a party.

Q. 8. In order to engage the services of Honeysuckle Pty Ltd was a meeting of directors of the Defendant convened?

If so, state:

(a) the date of the meeting of directors;

(b) each name of each director that was present at the meeting;

(c) each resolution that was passed at the meeting.

A. 8. *I refer to and repeat my answer to 7(e) (vii). I believe that the directors of the defendant may have convened to appoint consultants to the company.*

(a) I do not know.

(b) The identity of witnesses is not a matter for interrogatory.

(c) I object. The interrogatory is oppressive and irrelevant.

The answer to 7(e) (vii) is that the interrogatory there under consideration was irrelevant and that neither the

plaintiff nor Honeysuckle Pty Ltd was an employee of the defendant. One of the questions between the plaintiff and the defendant is as to whether or not the defendant, as it alleges, engaged Honeysuckle Pty Ltd as a consultant and not the plaintiff. Questions directed to impeaching the defendant's case upon this issue must be relevant. For reasons already given it is not a sufficient answer to say that the defendant does not know when the directors met, nor does it appear that the sole purpose of the interrogatory relating to the identification of the directors is to enable the plaintiff to ascertain the identity of witnesses. The objection to 8(c), though crudely cast when compared with the prescribed grounds of objection, nevertheless points to the interrogatory failing to relate to a question between the plaintiff and the defendant and being too wide. Only resolutions relating to the engagement of the services of Honeysuckle Pty Ltd could relate to a question between the plaintiff and the defendant.

Q. 9. Annexed hereto and marked with the letter "C" is a true copy of a letter dated 17 August, 1990 sent by the Central Land Council to the Manager of Elders Pastoral. In respect of the letter, state:

...

(c) if the instructions to send the letter were given by the Defendant as a result of the resolution passed at the meeting of Directors of the

Defendant held on 16 August, 1990 at which meeting, it was resolved to terminate the services of the Plaintiff.

- A. 9. (c) ***The letter was sent following that meeting however I refer to and repeat my answer to question 7(e) (vii) and (f) above.***

The answer which is cast in terms of time does not answer the question which is directed to causation. The reference to other answers only serves to further confuse.

- Q. 10. Annexed hereto and marked with the letter "D" is a true copy of a letter dated 17th August, 1990 sent by the Central Land Council to Southern Cross Machinery (Aust) Pty Ltd. In respect of the letter, state:

...

(c) if the instructions to send the letter were given by the Defendant as a result of the resolution passed at the meeting of directors of the Defendant held on 16 August, 1990 at which meeting, it was resolved to terminate the services of the Plaintiff.

- A. 10. (c) ***I repeat my answer to question 9(c) above.***

For reasons already given this answer is not sufficient.

Q. 11.State each date between 27 June, 1986 and 3 July, 1989 on which the Plaintiff performed work for or on behalf of the Defendant or provided services to the Defendant and the hours the Plaintiff worked on each date.

A. 11.***I object to answering upon grounds that it is oppressive and irrelevant.***

Leaving aside the proper form of the objection, given the issues joined between the parties the interrogatory does not relate to a question between them.

Q. 12.State each date between 3 July, 1989 and 17 August, 1990 on which the Plaintiff performed work for or on behalf of the Defendant or provided to the Defendant and the hours the Plaintiff worked on each date.

A. 12.***I object to answering upon grounds that it is oppressive and irrelevant.***

Leaving aside the proper form of the objection, given the issues joined between the parties the interrogatory does not relate to a question between them.

Q. 13.State each date between 27 June, 1986 and 3 July, 1989 on which Honeysuckle Pty Ltd, its servants and agents provided services to the Defendant, the kind of service provided on each date, the name of each servant or agent of Honeysuckle Pty Ltd that provided each service and the hours worked on each date by each servant or agent of Honeysuckle Pty Ltd.

A. 13.***I object to answering upon grounds that it is oppressive and irrelevant.***

Leaving aside the proper form of the objection, given the issues joined between the parties the interrogatory does not relate to a question between them.

Q. 14.State each date between 3 July, 1989 and 17 August, 1990 on which Honeysuckle Pty Ltd, its servants and agents provided services to the Defendant, the kind of service provided on each date, the name of each servant or agent of Honeysuckle Pty Ltd that provided each service and the hours worked on each date by each servant or agent of Honeysuckle Pty Ltd.

A. 14.***I object to answering upon grounds that it is oppressive and irrelevant.***

Leaving aside the proper form of the objection, given

the issues joined between the parties the interrogatory does not relate to a question between them.

Q. 17.State if it was a term of the engagement of the Plaintiff's services by the Defendant that the Plaintiff's fees would be reviewed annually in line with the National CPI increases and, if so, further state:

(a) if the Plaintiff's fees were ever reviewed annually in accordance with the National CPI increases and, if so, further state the date of each review and the amount of increase in fees that the Plaintiff was allowed on each occasion;

(b) if the Plaintiff's fees were never reviewed annually in accordance with National CPI increase, the reasons why not.

A. 17.***The interrogatory is vague and oppressive. Neither the Plaintiff nor Honeysuckle Pty Ltd were engaged as an employee of the defendant. The interrogatories assumes a single engagement, made of the Plaintiff by the Defendant which the Plaintiff knows to be incorrect.***

(a) To my knowledge, no review of the hourly rate paid to Honeysuckle Pty Ltd of work performed by its servants or agents pursuant to any retainer or instruction by the defendant occurred at any time during any periods of appointment of the Plaintiff or Honeysuckle Pty Ltd as consultant to the Defendant.

(b) I believe that the rate of a mileage allowance paid to Mr Didi Smith or Honeysuckle Pty Ltd was increased between 1976 and 1990.

The first part of the interrogatory is not directed to any particular time, and given the Statement of Claim, it is not possible to identify the time to which the question is directed. It does not identify the question between the parties to which it relates. No particulars are given of the oppressiveness of the interrogatory. The confusion of terminology between the plaintiff and the defendant as to the terms of the contract alleged between them is perpetuated in the first part of the answer. 17(a) relates to the plaintiff, but the answer relates to Honeysuckle Pty Ltd, and 17(b) relates to the review of the "plaintiff's fees" and the answer talks about a rate of mileage allowance. If it had not been for the unsatisfactory nature of the first interrogatory, the answers to the whole of this interrogatory would not have been sufficient.

Q. 18.State if it was a term of the engagement of Honeysuckle Pty Ltd's services by the Defendant that Honeysuckle Pty Ltd's fees would be reviewed annually in line with the National CPI increases and, if so, further state:

(a)if Honeysuckle Pty Ltd's fees were ever reviewed annually in accordance with the National CPI increases and, if so, further state the date of each review and the amount of increase in fees that Honeysuckle Pty Ltd was allowed on each occasion;

(b)if Honeysuckle Pty Ltd's fees were never reviewed annually in accordance with National CPI increases, the reasons why not.

A. 18.***I object to answering the interrogatory as it does not identify which engagement.***

This interrogatory suffers from the same defect as did number 17 in failing to specify the time to which the question is directed, and the answer reflects an objection that the interrogatory is vague on that account.

Order that the defendant answer further the plaintiff's interrogatories numbered 1(a), 2(a), 7(a)-(d),

7(e) (i) & (ii), 7(e) (v), 7(e) (vii), 8(a) & (b), 9(c), 10(c),
and that the affidavit be filed and served within 21 days from
this date.