

Torun v Jovista Pty Ltd & Anor [2001] NTSC 55

PARTIES: ERDEN TORUN v JOVISTA PTY LTD & ANOR

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

JURISDICTION: Interlocutory Application

FILE NO: 307/97 (9728251)

DELIVERED: 17 May 20001

HEARING DATES: 19 and 24 April, 10 May 2001

REASONS OF: Master Coulehan

CATCHWORDS:

PRACTICE - Northern Territory - interrogatories -
leave - requirements

Cases followed:

Barber v The Nominal Defendant (1990) 153 LSJS 8
Pearce v Hall 52 SASR 568
Rodriguez v Jolley (1998) SCNT 1686

REPRESENTATION:

Counsel:

Plaintiff	Mr Alderman
Defendants	Ms Burnett

Solicitors:

Plaintiff	De Silva Hebron
Defendant	Clayton Utz

Judgment category classification:

Judgment ID number: mas9001

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

309/97(9728251)

Between:

ERDEN TORUN

Plaintiff

and

JOVISTA PTY LTD and ANOR

Defendants

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 17 May 2001)

[1] The plaintiff claims damages for injuries suffered while lifting in the course of his employment. He alleges that at the time of his injuries he was an employee or sub-contractor of the first or the second defendants. The particulars provided allege that at the time of the injury, he was under the direct supervision of the first defendant, although he rendered accounts for his services to the second defendant, using his business name, and was paid by the second defendant.

[2] This pleading raises issues as to whether either or both defendants were responsible for the system of work at the time of the plaintiff's injury. The first defendant has admitted that the plaintiff was its sub-contractor, but both defendants deny that they had a duty of care towards the plaintiff and that they were negligent and in breach of contract.

[3] The defendants seek leave to interrogate the plaintiff, and a copy of the proposed interrogatories has been provided.

[4] The Rules no longer permit interrogatories as a matter of course, and I have previously expressed the opinion that a party seeking to interrogate should be able to demonstrate that the answers will serve some necessary or useful purpose (see *Rodriguez v Jolley (1998) SCNT 1686*). It may be expected that such a party would be at some disadvantage or that the answers would save significant trouble or expense. For a useful discussion as to the sort of considerations which may apply, see *Barber v The Nominal Defendant (1990) 153 LSJS 8*, which was referred to with approval in *Pearce v Hall 52 SASR 568*.

[5] There are 36 proposed interrogatories, 8 of which relate to liability. Most of the information sought in relation to liability may be gleaned from the particulars provided, which are binding on the plaintiff. Insofar as the defendants seek admissions as to documents, these may more appropriately be sought by way of notice to admit, at least in the first instance.

[6] As for the interrogatories relating to damages, they appear to have been produced on a word processor to cover the field. The reference in one of the proposed interrogatories to pain in the left hand, which is not an alleged injury, suggests lack of care in drafting. If interrogatories were to be allowed on this basis, there would be no point in requiring leave.

[7] There are many ways in which information or evidence may be obtained. The need for, or the beneficial effect of, answers to interrogatories should be demonstrable. The defendants have failed to persuade me that they have not been provided with, or are unable to obtain, at a reasonable cost, information or evidence reasonably required.