

PARTIES: Leigh, James William
v
Jennings Group Ltd and C.E. Heath Underwriting and Insurance (Australia) Pty Ltd

TITLE OF COURT: Supreme Court of the Northern Territory

JURISDICTION: Interlocutory Application

FILE NO: A/S 126/86

DELIVERED: 13 March 1996

REASONS OF: Master Coulehan

CATCHWORDS:

PRACTICE - Northern Territory - discovery and inspection of documents - third party - O.29.09 Supreme Court Rules - notice appointing time and place for inspection of documents

REPRESENTATION:

Counsel:

Plaintiff: Mr Stirk
Third Party: Mr Bennett

Solicitors:

Plaintiff: McBride & Stirk
Third Party: Martin & Partners

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

A/S 126 of 1986 (8622102)

BETWEEN:

JAMES WILLIAM LEIGH

Plaintiff

and

JENNINGS GROUP LTD

Defendant

and

C.E. HEATH UNDERWRITING

AND INSURANCE (AUSTRALIA) PTY LTD

Third Party

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 13 March 1996)

The third party seeks an order that the plaintiff serve on it a notice appointing a time and place for the inspection of documents pursuant to O.29.09(2) Supreme Court Rules.

The relevant rules read as follows:-

“O.29.06

“(3) A third party who has pleaded is entitled to obtain from the party making discovery a copy of a list exchanged in accordance with this order -

(a) by the plaintiff on the defendant by whom he was joined; ...

“O.29.09

“(1) A party -

.....

(c) to whom, under rule 29.06, a list ... is supplied may, by notice to produce in Form 29B served on the party making the list, require the party to produce the documents in his possession referred to in the list ... (other than a document which he objects to produce) for inspection.

(2) A party on whom a notice to produce is served in accordance with sub-rule (1) shall, within 7 days after that service, serve on the party requiring production a notice appointing a time within 7 days after service of the notice under that subrule when, and a place where, the documents may be inspected.”

No issue has been raised as to the supply to the third party of lists of documents filed by the plaintiff. The third party has served on the plaintiff’s solicitors a notice in Form 29B requiring production of certain documents referred to in the plaintiff’s lists of documents. It follows that the plaintiff must serve a notice as required by O.29.09(2).

The plaintiff drew attention to the claim for privilege in respect of items 5, 6 and 7 from part 2 of Schedule 1 in his further list of documents dated 18 October 1995. O.29.09(1) excludes documents which a party objects to produce. The provisions of O.29.10 do not apply because it does not appear that the documents sought to be produced are referred to in any of the types of documents mentioned in O.29.10(2). The notice to produce, which has not been filed, requires production of documents referred to in the plaintiff’s lists of documents.

The plaintiff also sought a period of 28 days in which to produce some of the documents. The third party had no objection to this.

The defendant gave the plaintiff notice on 21 November 1995 that it would pursue this application if the plaintiff did not comply with the rules. Following discussion it was agreed that further time would be allowed. On 15 December 1995 the plaintiff's solicitors were given notice that an interlocutory application would be made without notice if there was no compliance within 48 hours. This application was filed on 12 February 1996. The notice required has not yet been served.

The plaintiff argued that the vacation should be taken into account but this would only account for part of the delay. It is the default of the plaintiff which necessitated this application.

Although the plaintiff has been partially successful, the production of the documents for which privilege was not claimed may have made this application unnecessary.

Pursuant to O.63.18 and following the decision of **TTE Pty Ltd v Ken Day Pty Ltd** (1992) 2 NTLR 143, 145, the plaintiff should bear the costs of this application.

I order as follows:-

1. That the plaintiff, within 28 days, serve on the third party a notice appointing a time within 7 days after service of the notice when and where the following documents may be inspected:-
 - (a) Items 4 to 9 inclusive, 11 to 14 inclusive, 16 to 30 inclusive,

35 to 43 inclusive and 48 to 58 inclusive referred to in the plaintiff's list of documents dated 22 September 1994;

(b) Items 3, 4, 5, 6 and 7 from Part 1 of Schedule 1 referred to in the plaintiff's list of documents dated 18 October 1995.

2. That the plaintiff pay the third party's costs of this application.