

PARTIES: NT Pak Pty Ltd (in liq.) v
Maurice Alexander O'Brien & Ors

TITLE OF COURT: In the Supreme Court of the
Northern Territory of Australia

JURISDICTION: Interlocutory Application

FILE NO.: 213 of 1989

DELIVERED: 20 October 1994

REASONS OF: Master Coulehan

CATCHWORDS:

Practice & procedure - 0.6.10 Supreme Court Rules - steps which
may have a tendency to bring a document to the notice of a
person to be served

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

No. 213 of 1989

BETWEEN:

NT PAK PTY LTD (in liquidation)

Plaintiff

and

MAURICE ALEXANDER O'BRIEN

and ORS

Defendants

MASTER COULEHAN: REASONS FOR DECISION

Delivered 20 October 1994)

The plaintiff seeks an order that the originating process in this proceeding be taken to have been served on the second defendant.

The plaintiff relies on O.6.10 Supreme Court Rules which reads as follows:

"Where for any reason a document has not been served in the manner required by or under a law in force in the Territory or by these Rules, but steps have been taken for the purpose of bringing, or which may have a tendency to bring, the document to the notice of the person to be served, the Court may, by order, direct that the document be taken to have been served on that person on a date specified in the order."

The writ was served on the first defendant on 23 November 1990 and on the third defendant on 21 November 1990.

There is evidence that the first defendant is the brother of the second defendant and that the third defendant is her mother. The subject of the proceeding, insofar as it relates to the second defendant, is real property situated in Virginia Road, Howard Springs ("the property").

The first and second defendants were registered as proprietors of the property on 25 August 1977 and they remain the registered

proprietors. Their address appears on the title as 162 Dowling Street, Katherine.

On 20 November 1990, a process server spoke to the third defendant who, he says, would not reveal the whereabouts of the second defendant.

On 27 November 1990 he attended the property and observed that a dwelling was under construction. There appears to have been no sign that anyone was living there. Enquiries of neighbours revealed that the second defendant had not been seen for "several months" and they had no knowledge of her whereabouts.

The process server also attended premises at Rapid Creek and spoke to a resident there who said she had been told "some time ago" by the third defendant that the second defendant was in Japan with her children. She did not know when the second defendant was expected to return.

In December 1993 a process server reported that he had carried out searches but was unable to locate the second defendant. There was no one living at the property, the house having been completed to "lock-up stage" and in need of repair. Enquiries of the neighbours revealed that the defendants were believed to be living on the Gold Coast.

The Litchfield Shire Council has advised that as at 7 January 1994 rates on the property were in arrears in the sum of \$1941.00.

No steps have been taken for the purpose of bringing the writ to the notice of the second defendant. Reliance is placed on steps which may have a tendency to do so.

I have not been referred to any authority which may assist and my own researches have been unsuccessful.

Reference to the Macquarie Dictionary, second edition, provides the following definition of "tendency":-

**"1. natural or prevailing disposition to move, proceed, or act in some direction or towards some point, end or result: the tendency of falling bodies towards the earth
2. an inclination, bent or disposition to something
3. special and definite purpose in a novel or other literary work."**

The use of this word suggests that there must be more than a possibility that the writ came to the notice of the defendant.

The steps taken by the plaintiff which may have brought the writ to the notice of the second defendant are service on the first and third defendants. It is argued that because of their family relationship it is probable that one or both of the first and third defendants have told her about the service of the process and that she is a defendant.

I am not satisfied that this is so. The evidence suggests that the second defendant may have been overseas when the process was served. While it is likely that she remains in contact with the third defendant and, possibly, the first defendant, it does not necessarily follow that she was told of the writ and that she was a defendant in the proceeding.

It was also argued that, being aware of the proceeding, she has abandoned all interest in the property. However, there is no evidence as to what involvement, if any, she had with the property. It is possible that she believes that the first defendant is looking after it, and her interests.

In any event, the plaintiff may have a difficulty arising out of the possible absence of the second defendant from the Territory at the time when the writ was served on the first and third defendants. It is unnecessary to consider this because I am not satisfied that steps have been taken which may have a tendency to bring the writ to the notice of the second defendant.

The application is refused.