Kanochkin v Stark Investments Pty Ltd & Anor [2001] NTSC 81

PARTIES	ANTHONY KANOCHKIN v STARK INVESTMENTS PTY LTD and ANOR
TITLE OF COURT	SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA
JURISDICTION	Interlocutory Application
FILE NUMBER	45/01(20102745)
DELIVERED	13 September 2001
HEARING DATE	30 August 2001
REASONS OF	The Master

CATCHWORDS

PRACTICE – Northern Territory – subpoenas duces tecum – return date not a date for trial or a hearing – not necessary – not an appropriate stage of the proceeding

CASES REFERRED TO

FCT ex parte Swiss Aluminium 68 ALR 587
Giblin v Beach (unreported, Bailey J 2 August 2001)
Greyhound v Deluxe Coachlines 67 ALR 93
Lucas Industries v Hewitt 18 ALR 555
Mamone v Gagliadi (2000) NTSC 1967
Queensland Trustees v White and Gardiner 72 ALR 287

REPRESENTATION

Counsel:

Plaintiff	Mr Priestley
1st Defendant	Mr McConnel
2nd Defendant	Mr Grove

Solicitors:

Plaintiff	Priestleys
1st Defendant	Morgan Buckley
2nd Defendant	Ward Keller

Judgment category classification	
Judgment ID number	mas021
Number of pages	3

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN
45/01(20102745)

Between:

ANTHONY KANOCHKIN

Plaintiff

and

STARK INVESTMENTS PTY LTD

and

BOVIS LEND LEASE PTY LTD

Defendants

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 13 September 2001)

[1] In this proceeding the plaintiff claims damages for personal injuries suffered as a result of a fall. He claims to have suffered injuries to various parts of the body, but the statement of claim contains no particulars of these injuries. The second defendant has joined issue as to the allegations of injury. The first defendant has not filed a defence. There does not appear to have been discovery of documents.

[2] The second defendant has filed and served subpoenas directed to the Territory Health Service, the Work Health Authority and St John Ambulance to produce medical records relating to the plaintiff and the accident the subject of this proceeding. Documents have been delivered into the custody of the Court in each case and the parties seek inspection. The plaintiff does not object to the defendants inspecting the documents, presumably, subject to any claims for privilege.

[3] O.42.02 provides:

"(1) In a proceeding the Court may, by subpoena, order that a person named attend at the trial or any other stage of the proceeding for the purpose of giving evidence or of producing a document or thing for evidence, or for both purposes."

[4] In ***Giblin v Beach***, an unreported decision of Bailey J dated 2 August 2001, subpoenas had been issued for the production of medical records. Bailey J held that the express terms of O.42.02 did not confine the return date for a subpoena to a date fixed for trial or a hearing. His Honour found that there was no issue as to whether the persons to whom the subpoenas were addressed were in possession of relevant records relating to the plaintiff and that the proceedings were at an advanced stage. He also found that the defendants were not "fishing" and were not using the subpoenas to circumvent the provisions for discovery from non-parties provided by O.32 (cf. ***Mamone v Gagliadi (2000) NTSC 1967***). He concluded that the subpoenas were directed to securing evidence relevant to the pleadings, which had reached a stage where their issue was appropriate.

[5] The documents sought are described in the subpoena addressed to Territory Health Services as follows:

"All notes, correspondence, file notes, x-ray reports, diagnostic records and medical records concerning Mr Anthony Kanochkin whose date of birth is 15 August 1967 and an injury to the said Mr Anthony Kanochkin on or about 24 February 1998 and which injuries concern his right side and involved his right hand and wrist, right shoulder, right hip, right back and right ankle."

[6] The other subpoenas are similarly worded.

[7] On one reading, the second defendant is seeking production of all records relating to the plaintiff, not just those relating to his injuries the subject of this proceeding. If so, it may be seeking the production of documents that are not relevant to this proceeding.

[8] The reason for proceeding in this manner was said to be for the "garnering" of evidence, but why it is necessary to inspect the plaintiff's medical records at this stage of the proceeding is not apparent. It was not suggested that there was any dispute as to the nature of plaintiff's injuries or their effects. It may be that following discovery of documents, medical examinations, and the service of medical reports, there will be no issue as to the plaintiff's injuries and the subpoenas will be unnecessary.

[9] The use of a subpoena for the production of relevant documents is a convenient and relatively inexpensive procedure, but it may involve strangers to a proceeding in inconvenience and expense, and it should only be allowed when clearly necessary (see ***Lucas Industries v Hewitt 18 ALR 555, Greyhound v Deluxe Coachlines 67 ALR 93,98, FCT ex parte Swiss Aluminium 68 ALR 587,590*** and ***Queensland Trustees v White and Gardiner 72 ALR 287,291).***

[10] I am not satisfied that these subpoenas are necessary, or that the proceeding has reached such a stage that their issue is appropriate. It will be ordered that the subpoenas be dismissed and the documents produced be returned.