

Coull v Nationwide News Pty Ltd [2008] NTCA 13

PARTIES: COULL, RAYMOND PATRICK
v
NATIONWIDE NEWS PTY LTD
(ACN 008 438 828)

TITLE OF COURT: COURT OF APPEAL OF THE
NORTHERN TERRITORY

JURISDICTION: CIVIL APPEAL FROM THE SUPREME
COURT EXERCISING TERRITORY
JURISDICTION

FILE NO: AP 13 of 2007 (20528121)

DELIVERED: 19 December 2008

HEARING DATE: 23 June 2008

JUDGMENT OF: MILDREN AND SOUTHWOOD JJ

APPEALED FROM: THOMAS J

CATCHWORDS:

COSTS – Order 26.11(2) – Order 48.12 – offer of compromise

Statutes:

Supreme Court Rules O 26.11(2), O 48.12

REPRESENTATION:

Counsel:

Appellant/Cross-respondent: T Molomby SC
Respondent/Cross-appellant:: N Swan

Solicitors:

Appellant/Cross-respondent: Povey Stirk
Respondent/Cross-appellant: Minter Ellison

Judgment category classification: A
Judgment ID Number: Sou0814
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IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Coull v Nationwide News Pty Ltd [2008] NTCA 13
No. AP 13 of 2007 (20528121)

BETWEEN:

RAYMOND PATRICK COULL
Appellant

AND:

NATIONWIDE NEWS PTY LTD
(ACN 008 438 828)
Respondent

CORAM: MILDREN and SOUTHWOOD JJ

REASONS FOR JUDGMENT

(Delivered 19 December 2008)

MILDREN & SOUTHWOOD JJ:

- [1] The question of costs was adjourned to enable the parties to obtain instructions and file written submissions about costs. Written submissions have now been filed.
- [2] The appellant seeks costs of the appeal and of the proceeding in the Supreme Court on an indemnity basis. The appellant relies on the following grounds. On 24 May 2007, there was a settlement conference that was conducted by the Master of the Supreme Court under O 48 r 12 of the Supreme Court Rules, at which the appellant offered to settle his claim for the sum of \$55,000 plus costs. The offer was rejected and under O 48 r 12(12)(a) of the

Supreme Court Rules the offer was placed in a sealed envelope at the conclusion of the settlement conference. On 5 June 2007 the appellant again offered to settle his claim for the sum of \$55,000 plus costs.

- [3] In support of its claim the appellant wrongly relies on O 26 r 8(2). That rule provides as follows:

Where an offer of compromise is made by a plaintiff and not accepted by the defendant and the plaintiff obtains a judgment on the claim to which the offer relates not favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim taxed on the indemnity basis.

- [4] Rule 26(8)(2) is within Pt 2 of O 26. That part of the rules only applies to offers made in personal injury cases.
- [5] The respondent opposes the appellant's claim for indemnity costs. The respondent correctly argues that under both O 26 r 11(2) and O 48 r 12(12)(a) of the Supreme Court Rules costs remain in the discretion of the Court. The respondent says that, therefore, the starting point is that ordinarily costs are to be awarded on a standard or party-party basis, and there are no special circumstances in this case, meriting departure from that course. The respondent had an arguable case and the respondent's conduct of its defence was reasonable.
- [6] In our opinion the respondent should pay the appellant's costs of the proceeding in the Supreme Court on a party-party basis up until 6 June 2007 and on an indemnity basis from 7 June 2007 until judgment. By 6 June 2007

the respondent had been afforded a reasonable time to consider the plaintiff's offer which was first made on 24 May 2007. The appellant's claim was a small claim. The offer made by the appellant was a very reasonable offer which realistically reflected the risks of the litigation. The appellant repeated his offer and the offer was left open during the course of the trial in the Supreme Court. The appellant ultimately obtained an award of damages which was about 145 per cent times his offer. There is no suggestion that the respondent made any counter offer in order to try and resolve the appellant's claim. Although the respondent's defences were arguable, in truth they were without any realistic prospects of success. The reports published in the two newspapers were clearly inaccurate reports.

[7] Parties should be encouraged to settle small claims such as this which have merit.

[8] In our opinion the respondent should pay the appellant's costs of the appeal on a party-party basis. There is no evidence before the Court that the appellant renewed his offer to settle the proceeding after the Supreme Court delivered its judgment.
