PARTIES:	KATHLEEN VAN RANGELROOY and KEITH CORNELIUS VAN RANGELROOY v STEPHEN BADDELEY AND STEPHEN JOHN McMAHON
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NOS:	86 of 1995 90 of 1996
DELIVERED:	3 October 1997
HEARING DATES:	2 October 1997
JUDGMENT OF:	Kearney J

REPRESENTATION:

Solicitors:

Plaintiff:	B. Cassells; (later) J. Neill
First Defendant:	A. Wyvill; (later) M. Michaels
Second Defendant:	D. Farquhar

Judgment category classification:	
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kea97026

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

No. 85 of 1995 (9508756)
No. 90 of 1996 (9610361)

BETWEEN:

KATHLEEN VAN RANGELROOY and **KEITH CORNELIUS VAN RANGELROOY**
Plaintiff

v

STEPHEN BADDELEY
First Defendant

AND

STEPHEN JOHN McMAHON
Second Defendant

CORAM: KEARNEY J

RULING

(Delivered 3 October 1997)

I rule today on various applications by the defendants, argued yesterday.

As to the first defendant's summons of 22 September to abridge the 42-day period of notice prescribed by r33.11(4) for the attendance of medical experts for cross-examination, it was ordered by consent that notice by the first defendant for attendance for that purpose by Messrs Yaksich, Schaeffer, Kerr and Dr Rice be given no later than 1 October.

The question of the costs of the summons of 22 September was argued. A useful chronology of material steps was handed up by Mr Wyvill of counsel for the first defendant. Undoubtedly, there was an element of confusion between the solicitors for the plaintiffs and the first defendant. To my mind this came about because a solicitor, Ms Bampton, from a firm of solicitors in South Australia said to be the legal agents for the first defendant in this litigation (not his solicitors on the record) dealt directly and orally with Mr Neill in the course of which some misunderstanding of their respective positions occurred. It seems clear enough, by the fact that the first defendant required initially nearly all of the plaintiff's medical experts to be available for cross-examination - a number eventually reduced by consent to 4 - that the solicitor in South Australia was not 'up to speed' noted very recently, on the preparation for trial as regards this aspect of the case. In the result, I consider that the fair order is that the first defendant pay one-half of the plaintiffs' costs of his application of 22 September.

By summons of 1 October 1997 the first defendant also sought to have the time in r33.08(3) for service of medical reports abridged from 42 days before trial to 28 days; that is to say, in effect, that such service be effected by

29 September instead of 15 September. Again, the accounts of a conversation between Mr Neill and Ms Bampton differed, but Mr Wyvill was content to rely on Mr Neill's account.

Dr Yaksich had made an expert report to the plaintiffs' solicitors on 4 June. This had been promptly passed to the first defendant's solicitors. The question of an extension of time for exchange of medical reports, from 15 September to 29 September, was discussed in a telephone conversation between Mr Neill and Ms Bampton on 20 August. In the circumstances which later obtained - what was said at a directions hearing on 21 August, and what was stated in my Associate's follow-up letter of 4 September - Ms Bampton very understandably believed that there was general agreement between the parties that time would be extended to 29 September. Further, neither Mr Neill nor anyone in his office took steps to inform any other party - or the Court - that the statement in my Associate's letter of 4 September (that agreement had been reached by the parties on an extension of time) was wrong; this was some 10 days before the time in the Rules expired on 15 September.

The facts disclose that there had been tardy attention by Ms Bampton to this aspect of preparation for trial. It was not until 23 September that she wrote to Dr Landy requesting a further report on 3 medical aspects, including Dr Yaksich's observation in the last paragraph of his letter of 4 June. In my view those queries should have been raised with Dr Landy months earlier; if

they had been, it is highly improbable that the application of 1 October would ever have become necessary.

On 24 September Mr Neill made it clear at a directions hearing that in his view there had been no agreement between the parties to extend time beyond 15 September. Dr Landy's report was to hand to Ms Bampton by 25 September, and was faxed to the plaintiff's solicitors on that day. It can be seen that in the result it was provided to the plaintiffs some 10 days after the last date permitted by the Rules.

Relying on Mr Neill's account of matters, Mr Wyvill submitted first that Mr Neill had in fact agreed to extend time to 29 September. I reject that submission. Mr Neill had indicated that he was prepared to agree to the extension of time (which had been sought by the second defendant, not the first defendant), provided all parties agreed to it in writing. This proposed course of action was prudent. The first defendant never put it in writing. Mr Neill never consented. His condition precedent to giving his consent, was never met. This is the reason for rejecting Mr Wyvill's first submission.

Alternatively, Mr Wyvill sought the indulgence of the Court, by way of an order to extend time to 29 September. He relied on matters relevant to the interests of justice and to the question of extending time in furtherance of those interests, as discussed by Kirby J in *State of Queensland v J L Holdings Pty Ltd* (1996-97) 141 ALR 353 at 368-371. I have considered the respective submissions of Mr Wyvill and of Mr Cassells of counsel for the plaintiffs, in

the light of the considerations mentioned by Kirby J. Weighing up the various considerations in the light of the facts and circumstances, I consider that the first defendant's application of 1 October should be granted; I so order. Only one report is in fact involved; this is Dr Landy's second report. It may be that the ruling today means that the plaintiffs will consider it necessary or desirable to seek further expert evidence on the matters dealt with by Dr Landy. It is a condition of the order made today that the first defendant raise no objection at trial to the late circulation by the plaintiffs of any report or reports from any such expert or experts; I fix 24 October as the last date on which the plaintiffs should provide any such report to the other parties.

I should say that in ruling in the way I have, I set entirely to one side any consideration of any need by the first defendant to amend any of his pleadings. The pleadings have been closed for some time, and the whole purpose of the extensive case-flow management process which has ensued would be set at nought, if parties were not by now ad idem as to the issues on which the trial is to be fought.

I consider that the plaintiffs must have their costs of the first defendant's application of 1 October.

I record that I also ruled yesterday on the second defendant's summons handed up, without objection, yesterday. By that summons Mr Farquhar sought to abridge the time fixed by Order 44, to enable the second defendant to serve a report by Managed Care Australia of 25 September 1997, together

with a statement by Mr Thambu of that company. The application was not opposed by the plaintiffs. Mr Farquhar has clearly supplied Mr Neill with all of these materials, although not in the prescribed form. The second defendant's application was granted yesterday on condition that a report and statement in the prescribed form is supplied by the second defendant to the plaintiffs by the close of business on Wednesday 8 October. It was also ordered that the second defendant pay the plaintiffs' costs of that application.

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