

PARTIES	YOUR HOME REALTY (NT) PTY LTD v DIAMOND & ZIKOS DEVELOPMENTS PTY LTD and ANOR
TITLE OF COURT	SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA
JURISDICTION	Interlocutory Application
FILE NO.	67/97 (9708287)
DELIVERED	1 May 1997
HEARING DATE	24 April 1997
REASONS OF	The Master

### **CATCHWORDS**

PRACTICE - Northern Territory - S.18 Local Court Act - transfer from  
Local Court - abuse of process - whether proceeding should be transferred and  
consolidated

### **CASES FOLLOWED**

McHenry v Lewis (1882) 22 Ch D 397  
Moore v Inglis 50 ALJR 589

### **REPRESENTATION:**

#### *Counsel:*

Plaintiff	Mr Taylor
Second Defendant	Mr Hebron

#### *Solicitors:*

Plaintiff	Cridlands
Second Defendant	De Silva Hebron

Judgment category classification	
Judgment ID Number:	mas9708
Number of Pages:	3

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY

OF AUSTRALIA

AT DARWIN

67/97 (9708287)

BETWEEN:

YOUR HOME REALTY (NT) PTY LTD

Plaintiff

and

DIAMOND & ZIKOS DEVELOPMENTS PTY LTD

First Defendant

EDWARD RICHARD TRIPPE

Second Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 1 May 1997)

The second defendant commenced proceedings against the plaintiff in the Local Court claiming \$8041-60 for wages due, being commission earned on the listing and sale of Unit 5, 12 Paspaley Place, Larrakeyah.

The plaintiff filed a defence and counterclaim, denying the debt and alleging that the plaintiff was in breach of his contract of employment in conspiring to induce a breach of contract between the plaintiff and the first defendant. The plaintiff has also counterclaimed for damages, no sum being specified.

Subsequent to the filing of the defence and counterclaim in the Local Court the plaintiff commenced this proceeding, claiming damages against the first defendant for breach of contract and against the second defendant for breach of his contract of employment and inducing the breach of contract by the first defendant. It does not appear to be in issue that this claim, insofar as it relates to the second defendant, is substantially the same claim as is raised by the plaintiff in the Local Court.

In these circumstances the proceeding is prima facie vexatious and the second defendant is entitled to a stay (see McHenry v Lewis (1882) 22 Ch.D 397 and Moore v Inglis 50 ALJR 589).

However, the plaintiff has applied pursuant to S.18 of the Local Court Act to have the Local Court proceeding transferred to this Court where it may be consolidated pursuant to O.9.12. It is not in dispute that the counterclaim is properly within the jurisdiction of this Court.

The application is opposed by the second defendant, it being argued on his behalf that the Court, by transferring the proceeding, would be sanctioning an abuse of process and would also be preventing the plaintiff from proceeding on his claim which is unrelated to the proceeding before this Court. The first defendant has indicated it will abide by the decision of the Court.

The plaintiff could have achieved the same result by applying for the transfer in proceedings instituted for that purpose. By ordering the transfer and consolidating the proceedings the Court is not sanctioning an abuse of process, it is preventing its continuance. It appears that common questions of law and fact arise in both proceedings and the rights to relief arise out of the same transaction. In particular the issue as to the second defendant's commission appears to be related to issues sought to be litigated by the plaintiff. This issue is not likely to be of such magnitude as to embarrass the conduct of the first defendant's case or cause it undue trouble or expense.

It is ordered that Local Court proceeding No. 9623550 be transferred to this Court and be consolidated with this proceeding.