PARTIES:	PERKINS, Frederick Charles
	v
	WHITBREAD, Rodney
	AND
	ROSS RIVER TOURS PTY LTD
TITLE OF COURT:	COURT OF APPEAL
JURISDICTION:	APPELLATE
FILE NO:	AP 11/94
DELIVERED:	DARWIN 6 DECEMBER 1994
HEARING DATES:	5 & 6 DECEMBER 1994
JUDGMENT OF:	MARTIN CJ., ANGEL & PRIESTLEY JJ.

CATCHWORDS:

Appeal - Leave to appeal - Interlocutory order - Sufficient doubt to warrant reconsideration on appeal - substantial injustice would result if left to stand.

REPRESENTATION:

Counsel:

Appellant: Mr Harris
First Respondent: Mr Hiley QC
Second Respondent: Mr McDonald

Solicitors:

Appellant: Cridlands
First Respondent: Morgan Buckley
Second Respondent: Martin & Partners

Judgment category classification: B
Judgment ID Number: mar94019
Number of pages: 3

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mar94019

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. AP11 of 1994

BETWEEN:

FREDERICK CHARLES PERKINS
Appellant

AND:

RODNEY WHITBREAD
First Respondent

AND:

ROSS RIVER TOURS PTY LTD
Second Respondent

CORAM: MARTIN CJ., ANGEL & PRIESTLEY JJ.

REASONS FOR JUDGMENT

(Delivered 6 December 1994)

The appellant seeks leave to appeal and if successful in that, to appeal from a decision of her Honour Justice Thomas by which he was added as a party, a defendant, to proceedings in which the first respondent is plaintiff and the second respondent defendant. In the words of counsel for the appellant, this is a case where the plaintiff having chosen the first defendant as his target, seeks to have an additional target available. The plaintiff's claim is that he suffered

damage whilst taking part in a rodeo in 1988 on land of which the first respondent was registered proprietor and in respect of which he claims the appellant, as receiver of the mortgagee, may have been an occupier at the time of the first respondent's loss.

Amongst the issues before Her Honour and this Court were those relating to the operation of the *Limitations Act* in respect of the application, particularly ss44 and 48A and the interrelationship between those provisions and Rules of Court, in particular at 9.06 and 36.01. They were not matters which her Honour needed to resolve in that application. The appellant also complains of her Honour's refusal to grant an adjournment of the application so that he could better prepare to meet the application, of which he had had about one month's notice. In that she was not wrong. He also raises a question as to whether there is a judgment between the first respondent and second respondent awarding the damages to the first respondent which has been set aside. The fact is the Court record shows that it was set aside and unless that order is properly set aside it remains in force. Other matters were raised during the course of argument going to alleged failures of her Honour in matters of practice and procedure.

To succeed on the application for leave the appellant must show that the correctness of the decision is attended by sufficient doubt to warrant it being reconsidered on appeal and, if the decision is wrong, substantial injustice would result if it were left to stand.

We are not satisfied on either account. In the context of

the arguments placed before her Honour her short generally worded reasons do not raise a sufficiency of doubt as to the correctness of her decision. In any event, the appellant has not shown substantial injustice. The matters of substance in respect of which he says he is dissatisfied can be argued before the Court when the necessary application by the first respondent for an extension of time to take proceedings against him under s44 of the *Act* is made. If there was any injustice, and we do not accept that there was, then the appellant has every opportunity to argue his substantive case upon that application, including as to prejudice generally and arising from insurance matters.

The application for leave to appeal is dismissed. Order the appellant to pay the first and second respondents costs.