

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

No. 233 of 1990

BETWEEN:

PASPALEY PEARLING CO.

Plaintiff

AND

ANSETT TRANSPORT INDUSTRIES

(OPERATIONS) PTY LTD

Defendant

**MASTER COULEHAN: REASONS FOR DECISION**  
**(Delivered 14 July 1994)**

On 23 April 1990 the plaintiff commenced this proceeding in the name "**Paspaley Pearling Co.**" claiming damages for breach of contract of carriage on 25 January 1990.

Notwithstanding the name of the plaintiff, it was pleaded in the statement of claim that the plaintiff was a duly incorporated company. This allegation was admitted.

The name of the plaintiff was the subject of correspondence between the parties solicitors in November 1991. The plaintiff's solicitor advised that it would apply to amend the name of the plaintiff to "**Paspaley Pearling Co. Pty Ltd**" at the hearing.

It appears from the affidavit of D.G. Alderman affirmed on 3 May 1994 that the defendant had billed the plaintiff in the name "**Paspaley Pearling Co.**", that there was a registered company called "**Paspaley Pearling Company Pty Limited**" and that "**Paspaley Pearling Co.**" has not been a registered business conducted by that company.

A search conducted at the office of the Australian Securities

Commission by the defendant's solicitor on 5 May 1994 shows the registered name "**Paspaley Pearling Company Limited**", however, it is noted that this is not a current name. This name has the same registered number as Paspaley Pearling Company Pty. Limited". It would appear to be a name held in reserve.

I am satisfied that the entity which contracted with the defendant was Paspaley Pearling Company Pty Limited. It follows that there has been an error in the name of the plaintiff. (See **Bridge Shipping P/L v Grand Shipping S.A. and Anor 173 CLR 239, 249** where Toohey J said "... one might think that a reference to a defendant as a firm, when it was a company, is a mistake in the name of the defendant even though, conceptually, different entities are involved").

Order 36 provides for the correction of an error or defect in a proceeding. In particular, Order 36.01(4) provides for the correction of the name of a party whether or not the effect is to substitute another person.

The substitution of "**Paspaley Pearling Co. Pty Limited**" would not have the effect of substituting another party because "**Paspaley Pearling Co.**" is the same entity, although wrongly described.

The defendant argues that as there was no such person as "**Paspaley Pearling Co.**" the writ is a nullity. It was made clear by the Full Court in **Smart and Ors v Stuart 83 NTR 1** that, in the light of wide powers to amend, the concept of a writ as a "**nullity**" is inappropriate. (See Angel J p.7 and Mildren J p.9).

Order 36.01(6) provides that an order may be made notwithstanding the expiry of a relevant limitation period where the Court is satisfied that no other party would be prejudiced in a way which could not be fairly met by an adjournment, an award of costs or otherwise.

The only prejudice alleged by the defendant is its loss of opportunity to plead the Limitation Act.

As O.36.01(6) is intended to overcome this difficulty, some additional prejudice must be in contemplation.

In the absence of such prejudice I order that the plaintiff have leave to amend the proceedings by changing the name of the plaintiff to "**Paspaley Pearling Company Pty. Limited.**"