

PARTIES: PETER JULIAN HANSEN

v

NORTHERN LAND COUNCIL

TITLE OF COURT: SUPREME COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: CIVIL

FILE NO: No. 143 of 1993

DELIVERED: 17 December 1998

HEARING DATES: 15, 17 December 1998

JUDGMENT OF: Angel J

**REPRESENTATION:**

*Counsel:*

Plaintiff: Mr S Southwood  
Defendant: Mr B O'Loughlin

*Solicitors:*

Plaintiff: Mr A G James  
Defendant: Ms A Cattermole

Judgment category classification: C

Judgment ID Number: ang98013

Number of pages: 6

ang98013  
IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

No. 143 of 1993

BETWEEN:

**PETER JULIAN HANSEN**  
Plaintiff

AND:

**NORTHERN LAND COUNCIL**  
Defendant

CORAM: ANGEL J

EX TEMPORE REASONS FOR DECISION

(Delivered 17 December 1998)

- [1] This is an application pursuant to Order 66.16 of the Supreme Court Rules by the plaintiff by summons dated 10 December 1998 for a stay of execution of certain cost orders made by the Master on 17 April 1997, when he ordered, pursuant to Order 66.04(4), that certain costs be paid and taxed forthwith. The costs ordered to be paid by the plaintiff to the defendant were taxed on 23 June 1998 in the sum of \$10,135.20.
- [2] The trial of the plaintiff's action, an action for damages for wrongful dismissal, was commenced before me on Tuesday 17 November 1998 and continued on 18 November and 19 November, when the trial was adjourned for further hearing to 8 February 1999. At the time of the adjournment, the plaintiff, who had completed his examination-in-chief, was under cross-examination.

[3] On the evening of 17 November 1998, the first day of the trial, the plaintiff was approached by a licensed bailiff or a Sheriff's officer, acting under instructions of the defendant, who attempted to execute a warrant issued on the application of the defendant to enforce the Master's orders in the sum of \$10,135.20.

[4] At the time the plaintiff had commenced his examination-in-chief and was to resume his evidence the next day. By agreement between counsel for the plaintiff and counsel for the defendant on 18 November 1998, attempts to execute the warrant were temporarily suspended.

[5] On 3 December 1998 the plaintiff's solicitor wrote to the defendant stating amongst other things:

“The application has been adjourned part-heard and my client, the plaintiff, was still giving evidence. There are pressing reasons why it remains appropriate that the warrant continue to be suspended. On 23 November 1998 I requested Ms Cattermole to indicate her attitude towards a continuation of the suspension .... I am still waiting for that response.”

[6] On or about 7 December 1998 the defendant's solicitor informed the plaintiff's solicitor that the defendant would not agree to the continuance of the suspension of enforcement of the costs orders.

- [7] The discretion of the Court under Order 66.16 to stay execution of a court order is a wide one and is to be exercised having regard to all the circumstances of the case. Each case has to be determined on its own facts: *Joskovitz v Bonnick* [1964] VR 654 at 656.
- [8] A party who obtains a judgment or order in his favour is entitled to have it enforced. Circumstances which justify a stay of a judgment or order, are circumstances which go to the enforcement of the judgment or order, not its validity or correctness: *The State Bank of Victoria v Parry & Others* [1989] WAR 240 at 244; *T C Trustees Ltd & Another v J S Darwen (Successors) Ltd* [1969] 2 QB 295. A stay is an unusual order and courts strictly insist that special circumstances are required to justify such orders : *Burnett v Francis Industries plc* [1987] 2 All ER 323 at 327e, 330a.
- [9] Mr O'Loughlin, who opposed the order for stay, submitted that because orders for costs on interlocutory matters are the exception rather than the rule, see Order 63.18, and because only exceptionally would such costs be ordered to be paid and taxed forthwith, see Order 63.04(3) and (4) and *Markorp Pty Ltd v King* (1992) 106 FLR 286, that the defendant ought not be denied the benefit of the orders.
- [10] However the justification for, and correctness of, the Master's orders are not relevant. The question on the present summons is whether the circumstances at the time of the application for a stay justify a stay of execution, not whether the orders for costs were justified in the first place.

Mr O'Loughlin also argued that a relevant factor was that the plaintiff took no steps to appeal from the cost orders of the Master, but again, I think that is an irrelevant consideration on an application such as this.

- [11] The question is whether the orders, assuming them to be correct, nonetheless, in the circumstances as they exist at the time of the application, should be stayed or not.
- [12] The plaintiff's affidavit material in support of the stay included the assertion that the plaintiff was impecunious. Impecuniosity may or may not be a relevant circumstance.
- [13] In *Joskovitz v Bonnick* [1964] VLR 654 at 659, Herron CJ said that in that case it was a matter, "of some importance". Of itself, impecuniosity is ordinarily no justification for a stay, see *Marine and General Mutual Life Assurance Society v Feltwell Fen Second District Drainage Board* [1945] KB 394. Some relevant factors as to whether a stay should be ordered or not are, if I may respectfully say so, usefully enumerated by Bingham LJ in *Burnett v Francis Industries plc* [1987] 2 All ER 323 at 330.
- [14] In the particular circumstances of the present case, on balance, I think an order for a stay of execution of the Master's costs orders should be made. The plaintiff's claim for damages for wrongful dismissal is a substantial claim which far exceeds the taxed costs. As Bingham LJ said in *Burnett*, supra, at 330:

“I think it probably is the case that the court looks favourably on monies which represent compensation for loss of a man’s livelihood, even where he has to some considerable extent, made good his loss elsewhere.”

[15] The costs orders were made on 17 April 1997. They were not taxed until 23 June 1998. They were not sought to be enforced by warrant until the evening of the first day of the trial. The delay in taxing costs is unexplained, as is the exquisite timing of the first attempted enforcement.

[16] The trial, through no fault of the plaintiff or the defendant, and to the observable anguish of the plaintiff, had to be adjourned to February 1999. The final resolution of the whole action is thus not far off. The Christmas vacation intervenes.

[17] The defendant agreed to suspend execution during the hearing of 18 and 19 November 1998. There is nothing to indicate the defendant, a statutory corporation, will suffer any prejudice if the costs orders are stayed. Without any explanation from the defendant as to the delay in taxation or the delay in enforcement or the timing of the first execution of the warrant, the defendant now seeks to hound the plaintiff in the middle of his cross-examination. Unexplained, it smacks of harassment.

[18] These peculiar circumstances, I consider, justify an exercise of the Court’s discretion in favour of the plaintiff. I therefore order a stay of execution of

the Master's orders for costs until further order. The costs of the application shall be paid by the defendant.