HOPKINS v QBE INSURANCE LTD

In the Supreme Court of the Northern Territory of Australia

Martin J.

2 December 1990 & 19 February 1992

JUDGMENT & ORDERS - Costs - Interlocutory Application - judgment in default of appearance - application to set aside by defendant - no order as to costs in Interlocutory Applications where grounds of application reasonable and no extraordinary circumstances - service of writ directly upon defendant not an exceptional circumstance - Supreme Court Rules (NT) R. 63.18

PRACTICE & PROCEDURE - Costs - Interlocutory Application - judgment in default of appearance - application to set aside by defendant - no order as to costs in Interlocutory Applications where grounds of application reasonable and no extraordinary circumstances - service of writ directly upon defendant not an exceptional circumstance - Supreme Court Rules (NT) R. 63.18

Case applied:

TTE Pty Ltd & Anor v Ken Day Pty Ltd (unreported, 29 May 1990)

Statutes:

Supreme Court Rules (NT) 1987

Counsel for the plaintiff	:	J Reeves
Solicitors for the plaintiff	:	Cridlands
Counsel for the defendant	:	S Gearin
Solicitors for the defendant	:	Ward Keller

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 536 of 1990

BETWEEN:

MERLE DOREEN HOPKINS
Plaintiff

AND:

QBE INSURANCE LIMITED
Defendant

CORAM: MARTIN J.

REASONS FOR JUDGMENT

(Delivered 19 February 1992)

On 22 May last year I ordered, upon an application by the defendant, that a judgment obtained against it in default of appearance be set aside and then indicated that I would hear counsel as to any further orders including as to costs. The cost issue was argued on 2 December 1990. The order was made pursuant to an interlocutory application and thus each party must bear its own costs unless the Court otherwise orders (r. 63.18). In *TTE Pty Ltd & Anor v Ken Day Pty Ltd* (unreported, 29 May 1990) I said that the rule marked a radical departure

from the general practice relating to costs prior to commencement of the new *Supreme Court Rules* in that prior to then a party in whose favour an interlocutory order had been made would normally have expected to have an order for his costs of the application pursuant to the general rule that costs followed the event. (Subject always, of course, to the exercise of discretion). I went on to observe that the departure from the previous general principle leads to the view that there must be something exceptional about the circumstances of the interlocutory application under consideration to lead the Court, in the exercise of its discretion, to make an order as to costs. "What is required is an approach which seeks to have a successful party reimbursed the expenses of interlocutory proceedings which, for example, would have been unnecessary or which are unnecessarily burdensome .... ". I went on to say that no order as to costs ought to be made against the unsuccessful party, in the usual run of cases, even if contested, if the grounds of the application or resistance, as the case may be, were reasonable. "However, if such application or resistance is without real merit, as is often the case, the successful party should not have to bear its costs."

The only reason put forward by the defendant as to why it had failed to enter an appearance, and thus enabled the plaintiff to obtain the judgment in default, was that the solicitors for the plaintiff had acted in bad faith or unfairly towards the defendant or its solicitors by serving the writ

directly upon the defendant and obtaining judgment without giving notice. I firmly rejected the proposition that the solicitors had acted in such a way. The fact that an appearance had not been entered was entirely down to the defendant and it was its own fault that made it necessary to make the application to set the judgment aside. It was unsuccessful on that issue.

There were four other major issues argued and they and the result of them may be briefly summarised as follows:

1. Whether this Court has jurisdiction to entertain the claim by the plaintiff against the defendant. The answer was yes. The defendant lost that point.

2. Whether a proper claim had been made by the plaintiff against her employer. The answer again was yes. The defendant lost that point.

3. Whether a claim had been made against the defendant insurer in time. On that issue the defendant was successful. I held that the claim had not been made in time, but noted that there were provisions whereby an extension of time might be granted in the Work Health Court. The defendant was successful on that point.

4. Whether the judgment had been irregularly obtained, in

that the Statement of Claim did not disclose a cause of action against the insurer. I held that it had. The defendant was successful on that point.

The application to set aside the judgment obviously had some merit although not upon all grounds upon which it was advanced. The resistance to the application was reasonable although, again, partly unsuccessful.

There is no good reason shown as to why the Court should by order disturb the operation of r. 63.18 in this case.