

Limitation on leave to deliver interrogatories further explained

Suncorp General Insurance Limited v Deidre Anne Ranger
- Court of Appeal (Qld) 17 August 1998 No 4583 of 1998
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This recent Court of Appeal decision will be of interest to plaintiff lawyers (particularly in Queensland) in the area of personal injury claims.

By way of preface, practitioners would be aware of the new system dealing with the delivery of interrogatories in the Supreme Court and relevantly set out in Order 35 Rule 21 RSC specifically:-

"21 (1) Subject to an order of the Court or a Judge, leave to deliver interrogatories may be granted -

- i) on application without notice to any other person; and
- ii) only if the Court or Judge is satisfied there is not likely to be available to the applicant at the trial any other reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory.

The application must be accompanied by a draft of the interrogatories intended to be delivered, unless the Court or Judge otherwise directs."

This then, in essence, is the regime which has been in existence since 1 May 1994.

The appellant (Suncorp), having made an unsuccessful application for leave to deliver interrogatories in the Supreme Court appealed to the Court of Appeal. According to the appellant's outline, answers to the interrogatories proposed were likely to be useful because the appellant anticipated the need for expert evidence if it was to contest the respondent's allegations. It was further suggested that the obtaining of answers would be conducive to a settlement of the action.

The plaintiff alleged in her statement of claim that she was injured when struck by a Toyota motor vehicle of which Suncorp was insurer. The collision was said to have occurred at a service station

when the Toyota was being manoeuvred under the direction of the respondent. The draft interrogatories indicated quite clearly that the appellant wished to interrogate in detail about the circumstances of the collision alleged. The primary judge, Cullinane J dismissed the application saying amongst other things that:-

"This is a case in which the resolution of the issue between the parties falls to be determined by issues of credibility, there having been only two persons present, the plaintiff and the defendant, each of whom have different accounts of what occurred."

In dismissing the appeal, the Court of Appeal (Pincus J A) stated:-

"The opening words of rule 21 appear to me designed to give the judge a discretion to depart from what is provided by the rest of the sub-rule, and in particular to grant leave to deliver interrogatories even if not satisfied of the matters set out in sub-rule (1)(b). But the expectation, plainly, is that other than in quite special circumstances interrogatories will only be allowed if the condition set out in sub-rule (1)(b) applied; here it does not."

As a consequence of this decision it can be said that where in a personal injury case involving a motor vehicle, the case is simply one in which one party wishes to interrogate another about the details of the opposing party's version of the facts and perhaps to facilitate settlement, the provisions of Rule 21 would not be satisfied.

It should also be noted that in this case, far from the facts alleged being vague, the plaintiff went into some detail by particulars in the statement of claim. The defendant appeared to only have some recollection of the details of the incident and did not apparently see part of the overall event. That circumstance was not considered unusual nor a reason to depart

from the sub-rule. It should also be said that the Court of Appeal made it quite clear that the authorities relied upon by the appellant from the 1950s and 60s were not considered to be any help in applying Order 35 Rule 21.

Looking further afield (eg Master & Servant actions), it might well be said that where there is simply credibility involved as to how an incident occurred, or where the matters sought to be elicited by interrogatories could be ascertained at trial by the simple means of listening to the evidence and by cross examination, leave to deliver interrogatories for these purposes will no longer be granted. ■

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