

CITATION: *Rapid Metal Developments (Australia) P/L v Skarlatos*
[2003] NTMC 070

PARTIES: Rapid Metal Developments (Australia) P/L

v

Nicholas Skarlatos

TITLE OF COURT: Local Court

JURISDICTION: Local Court

FILE NO(s): 20216541

DELIVERED ON: 31 December 2003

DELIVERED AT: Darwin

HEARING DATE(s): 9 December 2003

DECISION OF: Jenny Blokland SM

CATCHWORDS:

REPRESENTATION:

Counsel:

Plaintiff: Ms McLaren
Defendant: Ms Farmer

Solicitors:

Plaintiff: Asha McLaren
Defendant: Withnall Maley

Judgment category classification:

Judgment ID number: [2003] NTMC 070

Number of paragraphs: 13

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

No. 20216541

BETWEEN:

**RAPID METAL DEVELOPMENTS
(AUSTRALIA) P/L**
Plaintiff

AND:

NICHOLAS SCARLATOS
Defendant

REASONS FOR DECISION

(Delivered 31 December 2003)

Ms Blokland SM:

Introduction

1. This is an appeal against the decision of Judicial Registrar Monaghan delivered on 17 September 2003 in which she ordered the default judgment entered in favour of the plaintiff on 29 January 2003 to be set aside. Judgement had previously been entered in the sum of \$30,150.85 inclusive of costs and interest.
2. The appeal is conducted by way of re hearing, although Judicial Registrar Monaghan's judgment was referred to throughout the hearing and provided a useful guide to the issues between the parties.

The Judicial Registrar's Decision

3. Judicial Registrar Monaghan came to the conclusion that the default judgment was irregular and should therefore be set aside. Part of her reasoning was that in her view the original claim was partly for a liquidated

debt and partly unliquidated. Naturally she concluded the unliquidated portion should have been referred to an assessment hearing. Judicial Registrar Monaghan also found a number of other irregularities in the pleadings and at one point ordered the filing of further affidavit material to clarify the basis of aspects of the plaintiff's claim.

Arguments before the Local Court

4. Ms McLaren disputes the conclusion of the learned Judicial Registrar contending that she misapplied *Alexander v AJAX Insurance Company Limited* [1956] VLR 436. Ms McLaren argued that the debt, (being a debt for the provision and transport of certain materials to the Defendant in East Timor) is a liquidated claim. She relies on those parts of *Alexander v Ajax* indicating that a claim may still be characterised as a liquidated claim for goods sold and delivered or work and labour done, where no price or rate has been fixed by the parties. Such a claim, it is argued, is still to be regarded as a liquidated claim. (*Alexander v Ajax at 440*)
5. That part of the argument relates to part of the dispute concerning an assessment of the cost of returned materials from the defendant to the plaintiff. The plaintiff has assessed the cost of those materials including damage to them. It also relates to a question over the calculation of transport costs.
6. The Defendant contends in this case that all outstanding moneys owed to the Plaintiff have been paid. The Defendant argues that the irregularities in pleadings are such that the judgment should not stand and still presses that the Judicial Registrar was correct in characterising the claim as partly liquidated.

The alleged discrepancies

7. The Defendant alleges the statement of Claim is wholly deficient. The following points are noted:

- The judgment sum differs from the amount claimed in the Statement of Claim.
- There is no clarification of the existence of a trading account.
- Nothing is pleaded concerning an ability to change interest.
- Nothing is pleaded to identify whether the amounts outstanding concern the hire of transport of materials
- Nothing is in the pleadings to indicate what materials the plaintiff “deemed” to be unreturnable and what was charged for (It is argued it is unfair for the defendant to have a guess)
- The interest in the schedule to the statement of claim is irregular.
- The transport costs are not properly particularised.
- The contract between the parties is not properly pleaded, making no reference to a trading account which is apparently relied on to found liability.

In response Ms McLaren has raised the following arguments:

- Any lack of detail in the pleadings may be excused because the defendant already had particulars of the debt by way of invoices and other documentation
- That there was in existence a contract incorporating a Trading Account and there was no need to mention the Trading account nor any associated credit the defendant obtained.
- That the Statement of Claim did not need to particularise various items such as the transport costs or the value of goods returned.

Principles

8. If the judgment is irregular as a matter of law, it cannot stand. In my view, notwithstanding what has been said in terms of the fact that liquidated claims may still embrace claims where there is an element of assessment when it involves the provision of labour and goods and services, this claim is so unclear on how each component is calculated that in my view the judgment should not be permitted to stand.
9. Although I accept there are cases where for example labour costs and other debts claimed may need to be calculated, in my view such claims can only be regarded as liquidated if they can be calculated clearly and with reference to some accepted or standard measure. After hearing argument, I find myself still agreeing with the Judicial Registrar that part of this claim at least should have been characterised as unliquidated and should have been assessed. I still have concerns in my mind about how the transport costs are calculated and how the value of materials returned are to be assessed. In my view those parts of the judgment are irregular. I should add further that whatever the case the Local Court Rules would in my view require assessment in this situation.
10. If I am wrong and the judgment is wholly regular, I tend to agree that the explanation of the delay is not wholly acceptable. There does appear to have been some attempt by the defendant to deal with the matter but he seems to have accessed the wrong professional.
11. The defence filed is not wholly satisfactory either, however in some respects this may be an inevitable response to the way the claim was pleaded.
12. In terms of prejudice the Plaintiff, I note the Plaintiff has taken out a bankruptcy Notice and has gone to much trouble and expense to enforce what it undoubtedly believes it is entitled to. The Plaintiff's solicitors were on notice, as I understand it, from 25 June 2003 that the judgment was under

challenge. In these circumstances the prejudice cannot be said to arise through action taken to set aside the judgment.

Conclusion

13. While not a totally satisfactory situation, in my view, on balance the default judgment should have been set aside as it was by Judicial Registrar Monaghan. Assuming it was regularly entered, in my view the statement of claim is so defective and at odds with the default judgement that it should not be allowed to stand. A default judgment in this court should be completely transparent. Many of the facts relating to the substance of the claim have only been known after the judgment was entered, through the affidavit material disclosed to the Judicial Registrar. Whether the judgment is seen to be irregular or regular, in my view there are so many hidden issues not properly dealt with in the Statement of Claim that the resulting default judgment should not be permitted to stand. Although not the only examples, the transport costs and the failure to deal with the cost of returned goods or goods deemed unreturnable make it very difficult to accept the authenticity of a default judgment as representing the sum of what is actually owed. There should be an amended Statement of Claim filed that properly and accurately reflects the various sums claimed and how those sums are calculated.

Orders

- 1 I dismiss the appeal and confirm the order to set aside the default judgment entered on 29 January 2003.
- 2 I request the parties confer and if they are able to agree costs, to file drafts minutes of orders.
- 3 If there is no agreement on costs, liberty to apply is granted to list the matter for argument.

- 4 Given that a number of law firms are closed during this period of the year, I direct that my reasons be posted.

Dated this 31st day of December 2003.

JENNY BLOKLAND
STIPENDIARY MAGISTRATE