

CITATION: *Leigh v Kaur* [2005] NTMC 040

PARTIES: Allan Leigh
v
Jasswant Kaur

TITLE OF COURT: Local Court

JURISDICTION: Local Court

FILE NO: 20408607

DELIVERED ON: 1 July 2005

DELIVERED AT: Darwin

HEARING DATE(s): 27 May 2005

JUDGMENT OF: John Lowndes SM

CATCHWORDS:

SMALL CLAIM ACT – COSTS – POWER TO AWARD COSTS IN FAVOUR OF A
SUCCESSFUL CLAIMANT IN AN INTERPLEADER IN A SMALL CLAIMS
PROCEEDING

Small Claims Act, ss5; 29 & 30A
Small Claims Rules, *Rule 1.08*
Local Court Rules, rule 14.14.

REPRESENTATION:

Counsel:

Plaintiff: Mr B O'Loughlin
Defendant: Allan Leigh in Person
Bailiff: Mr Priestly

Solicitors:

Plaintiff: T S Lee and Associates

Judgment category classification: A
Judgment ID number: [2005] NTMC 040
Number of paragraphs: 16

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

No. 20408607

BETWEEN:

ALLAN LEIGH
Plaintiff

AND:

JASSWANT KAUR
Defendant

REASONS FOR JUDGMENT

(Delivered 1 July 2005)

Dr Lowndes SM:

1. Dr Singh, the successful plaintiff in the interpleader proceedings, has applied for an order for costs against either the defendant, Mr Leigh, or the bailiff, Mr Coghill.
2. The issue that falls for determination is whether the Court has power to order costs against either party.
3. The original proceedings, out of which the interpleader action arose, were in the nature of a small claim commenced in the Local Court pursuant to the provisions of the *Small Claims Act*. There is no provision under either the *Smalls Claims Act* or the *Smalls Claims Rules* for the commencement of an interpleader action. However, Rule 1.08 of the *Small Claims Rules* provides that where the manner or form of the procedure for commencing or taking a step in a proceeding is not prescribed by the rules the Court may adopt and apply with the necessary changes the relevant procedures, rules and forms observed and used under the *Local Court Rules*. Rules 14.04 – 14.08 of

those rules provide the necessary machinery for a bailiff's interpleader. The interpleader action in these proceedings was brought pursuant to those very provisions.

4. Mr O'Loughlin, counsel for the plaintiff, submitted that because Part 14 of the *Local Court Rules* has been invoked in aid of the interpleader action the proceedings have been transformed into a Local Court Claim pursuant to the *Local Court Act*, and accordingly the Court has unfettered power to award costs pursuant to s 31(1) of the *Local Court Act*.¹ I do not accept that submission. The mere fact that the provisions of Part 14 have been invoked in no way changes the intrinsic character of the interpleader action. That action is an adjunct to the small claim proceedings commenced under the provisions of the *Small Claims Act*. The invocation of Rule 1.08 of the *Small Claims Rules* simply results in the interpleader rules of the *Local Court Rules* being treated as part of the *Small Claims Rules* as if they were expressly included therein. The present interpleader remains part of a small claim proceedings governed by the *Small Claims Act* and its Rules.
5. The question that arises is whether there is any basis under either the Act or the Rules for awarding the plaintiff costs in relation to the interpleader proceedings.
6. Proceedings under the *Small Claims Act* are governed by s 29 of the Act which provides:

“Except in respect of an application for rehearing, the Court is not to make an order in relation to the costs of proceedings unless the Court is satisfied that –

- (a) the order is in respect of an amount or claim the value of which is more than \$5,000; and

¹ Section 31(1) provides:

“Subject to this or any other Act or the Rules, the costs of and incidental to proceedings in the Court are in the Court's discretion and it has full power to determine by whom, to whom and to what extent the costs are to be paid.”

- (b) having regard to the complexity of the law, facts or any other matter in respect of the proceedings, it is fair and reasonable to do so.”

7. During the course of hearing submissions I expressed the tentative view that s29 (1)(a) refers only to the subject matter of the originating process and not to a proceeding such as interpleader which may occur during the enforcement process. However, upon reflection, I do not consider that the matter is so straightforward.

8. Section 5 of the Act provides:

“Subject to and in accordance with the Rules, a person may institute proceedings in the Court to be dealt with under this Act with respect to a claim for –

- (a) the recovery of an amount not exceeding \$10,000;
- (b) the performance of work of a value not exceeding \$10,000;
- (c) relief from payment of money of an amount not exceeding \$10,000; and
- (d) the return or replacement of good to a value not exceeding \$10,000.”

9. That section is expressed in such broad terms as to embrace an interpleader action. Interpleader is “a procedure by which a party who is faced with competing claims for the same debt or property may avoid liability by forcing the claimants to resolve the dispute among themselves.”² The author goes on to say: “An interpleader order directs the various claimants to settle, or litigate, the claims among themselves”.³ Interpleader is clearly a proceeding which can be instituted in the Local Court exercising jurisdiction under the *Small Claims Act*⁴ and it is a claim which is referable to either the recovery of an amount of money or the return of property.

² Cairns *Australian Civil Procedure* (Law Book Co, Sydney 5th ed) p 266.

³ Cairns n 2, p 266.

⁴ See Rule 1.08 of the *Small Claims Rules* which brings into play Rule 14.14 of the *Local Court Rules*.

10. Section 30A of the *Small Claims Act* empowers the Court to make a variety of orders, including those requiring a party to return specified property. Relevantly, in an interpleader, the Court is required to nominate the parties, that is, who is to be the plaintiff and who shall be the defendant;⁵ and, as stated earlier, the purpose of an interpleader is to settle competing claims to specific property.
11. For those reasons the preferred view is that the subject matter of s 29(1)(a) encompasses an interpleader action which may result in the return of property to one or more claimants.
12. However, the Court is not empowered to make an order for costs in relation to the present interpleader unless it is satisfied that the value of the claim is greater than \$5,000. There is no evidence, or cogent evidence, before the Court showing that the Toyota Lexcen, the subject of the interpleader, had a value greater than \$5,000. Indeed, the evidence is the other way: see paragraph 7 of Dr Singh's affidavit sworn 20 December 2004 where he says that his daughter purchased the vehicle from him in June 2003 for \$1,500. Accordingly, the Court has no power to make an order for costs in favour of the plaintiff, Dr Singh, as the threshold requirement in s 29(1)(a) has not been satisfied.
13. But even if that threshold had been crossed, the Court would not have been disposed to award costs to the plaintiff. The proceedings were not complex – either in terms of the law or facts – and having regard to the very dubious circumstances under which the ownership of the vehicle was transferred by the daughter to the father just prior to the seizure of the vehicle by the bailiff it would have not been fair and reasonable to award costs to the plaintiff.

⁵ Cairns n 2, p 268.

14. I have considered whether there is any other basis for making an order for costs in favour of the plaintiff. In that regard, I have had recourse to Rule 14.14 of the *Local Court Rules* which provides:

“Where a bailiff applies for an interpleader order and the claim to the property in dispute is decided against the claimant, the costs of the bailiff in respect of the application are to be retained by the bailiff out of the proceeds of sale on execution of the warrant unless–

- (a) the execution creditor requests the Court to order that the costs be paid by the claimant, and the Court so orders; or
- (b) the Court orders otherwise.”

15. Part 14 says nothing about the Court awarding costs in favour of a successful claimant on an interpleader. Part 14 gives tacit recognition to the usual protection afforded to bailiffs in interpleader proceedings.⁶ Accordingly, neither that Part nor Rule 14.14 assists the plaintiff.

16. For the reasons given above I refuse the plaintiff’s application for costs and that application is dismissed.

Dated this 1st day of July 2005

Dr John Lowndes
STIPENDIARY MAGISTRATE

⁶ See pp 3 -4 of Mr Priestley’s written submissions made on behalf of the bailiff and dated 27 May 2005.