

CITATION: *Leigh v Kaur* [2005] NTMC 074

PARTIES: ALLAN LEIGH
v
JASWANT KAUR

TITLE OF COURT: Local Court

JURISDICTION: Absconding Debtors Act

FILE NO(s): 20408607 and 20413458

DELIVERED ON: 22 November 2005

DELIVERED AT: Darwin

HEARING DATE(s): 18 November 2005

JUDGMENT OF: Jenny Blokland SM.

CATCHWORDS:

APPLICATION FOR WARRANT – “MATERIAL MATTERS”; *Absconding Debtors Act*
NT ss4(3), 5, 6.

REPRESENTATION:

Counsel:

Plaintiff: Self
Defendant: N/A

Solicitors:

Plaintiff: N/A
Defendant: N/A

Judgment category classification: B
Judgment ID number: [2005] NTMC 074
Number of paragraphs: 11

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

No. 20408607 and 20413458

BETWEEN:

ALLAN LEIGH
Plaintiff

AND:

JASWANT KAUR
Defendant

REASONS FOR JUDGMENT

(Delivered 22 November 2005)

Jenny Blokland SM:

The Application

1. The plaintiff, Mr Allan Leigh has filed an application for the issue of a warrant of apprehension for the arrest of the defendant, Ms Jaswant Kaur pursuant to s5(2)(a) *Absconding Debtors Act*. The application was heard *ex parte* on 18 November 2005. I heard briefly from Mr Leigh but given it was an unusual application with serious consequences for the liberty of the defendant Ms Kaur, I adjourned the application until today to consider the history of this matter, the material Mr Leigh filed in support of his application and his submissions as to why it was necessary to proceed in this manner.
2. In his submissions, Mr Leigh advised me that the application should be heard *ex parte* as Ms Kaur would flee once served with the application. With some hesitation I agreed to hear the application.

3. I accept that across the two files the subject of this application there are judgment debts totalling \$3,300.
4. In support of his application Mr Leigh has stated in his affidavit:

“Some weeks ago Ms Kaur recommenced a relationship with me, and was periodically living at my residence, and periodically living with her parents.

On Wednesday 9 November 2005 while at my residence for a couple of hours, Ms Kaur told me of her intention to flee back to Queensland at or shortly after Christmas this year. This was specifically so as to ensure I could take no further action to recover the Court ordered debts.

For this reason it is requested the Absconding Debtors Act be utilised so as to ensure Ms Kaur remains in the territory until such time as her debts to myself are fully paid. Which her family are more than in a position to assist her with should they so choose to enable their daughter to return to Queensland.”

Relevant Sections of the Absconding Debtors Act

5. For a warrant to issue under s6(2) of the *Absconding Debtors Act*, the Court is directed in mandatory terms not to issue a warrant unless it is satisfied as to all “material matters”. “Material matters” are defined in s4(3) *Absconding Debtors Act*. That section requires any person making a decision in the matter be satisfied that there are reasonable grounds for believing that –
 - (a) the debtor owes a debt to the applicant;
 - (b) the debtor is about to leave the territory;
 - (c) failure to arrest the debtor would defeat, endanger or materially prejudice an applicant’s prospects of receiving a debt; and
 - (d) the debt
 - (i) is for wages due by the debtor to the applicant; or
 - (ii) is for an amount not less than the prescribed amount

Relevant History of This Matter

6. Notwithstanding the two debts have come about through Local Court civil proceedings, the Local Court files disclose documents that show a problematic relationship between the plaintiff and defendant. That material has been filed primarily by the plaintiff during the enforcement stages of the proceedings. Various installment orders have been made by the Court in relation to payment of the judgment debts and it would appear the defendant's father brought interpleader proceedings concerning the attempted seizing of a motor vehicle to satisfy the judgment debts. The satisfaction of the judgment debts has been problematic but that does not of itself justify a measure such as the arrest of the defendant. Further to this, in some of the Affidavit material filed by the plaintiff, references are made to a private prosecution brought by the plaintiff against the defendant, (I recall that I was to hear a stay application in the matter but the plaintiff withdrew the charges); to various proceedings under the *Domestic Violence Act*; to various medical and psychiatric conditions of either or both the plaintiff and the defendant. In my view, the context in which this application arises added with the serious consequences that may flow to the defendant require the criteria to be strictly applied to avoid potential or real injustice.

Application of the Criteria in s4(3) of the *Absconding Debtors Act*

7. I am satisfied under s4(3)(a) that the debtor owes a debt to the applicant given the judgments. Given the history of the matter I am unsure whether in terms of s4(3)(b) the fact that the defendant may have stated to the plaintiff she would "flee" back to Queensland is a true indication of her intentions. In an affidavit of the plaintiff's sworn 15 November 2004, the plaintiff refers to a previous statement to the effect that she will move interstate. In particular he refers to submissions made by the defendant's counsel in the stay application of the private criminal prosecution when it was before me. Clearly, the defendant has been in the Territory for some of the time since

previously stating an intention to leave. Further, the plaintiff's affidavit to support this application says the defendant would flee back to Queensland "at or shortly after Christmas this year". I am not sure that is clear evidence of her being "about to leave the Territory" as required by the section.

8. I will accept the plaintiff's assertion for argument's sake that the defendant is about to "leave", however I cannot be satisfied of the criteria in s4(3)(c) that *failure to arrest the debtor would defeat, endanger or materially prejudice an applicant's prospects of receiving a debt*.
9. On my reading of the files, the most the Court has been prepared to order in terms of instalments has been \$10 per fortnight: (eg Order of the Deputy Registrar of 15 November 2004). The defendant appears at this stage to have little or no means. The *Service and Execution of Process Act CW* allows for registration and enforcement of judgments inter-state. This is not a situation where it is alleged that assets will be disposed of upon leaving so as to prejudice the prospects of recovery. The files would further appear to indicate that the defendant has no assets capable of being realised to satisfy the debt – such is evident in the previous warrant of seizure and sale process. In circumstances where the defendant has no assets and according to the files is on a Centrelink benefit, I fail to see that the plaintiff's recovery action is "materially prejudiced" even if she does intend to leave the Northern Territory. I fail to see that the plaintiff's position is improved if the defendant were to remain in the Northern Territory.
10. In my view this is a totally inappropriate case for the Court to take the serious step of issuing a warrant for the arrest of a debtor, in any event the criteria has not been made out.

Order

11. The plaintiff's application for a warrant to arrest the defendant and have her remain in the Northern Territory until the debt is paid is dismissed.

Dated this day of 2005.

STIPENDIARY MAGISTRATE