

CITATION: Peter Ward & Jane Ward v Nickita Knight & N Knight Pty Ltd Trading
As Knight Family Law (ABN 15 627 212 819) [2020] NTLC 06

PARTIES: PETER WARD
FIRST PLAINTIFF

AND

JANE WARD
SECOND PLAINTIFF

V

NICKITA KNIGHT
FIRST DEFENDANT

AND

N KNIGHT PTY LTD TRADING AS
KNIGHT FAMILY LAW (ABN 15 627
212 819)
SECOND DEFENDANT

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO: 2020-00502-LC

DELIVERED ON: 27 APRIL 2020

DELIVERED AT: DARWIN

HEARING DATE: 20 APRIL 2020

DECISION OF: GORDON JR

CATCHWORDS:

TRANSFER OF PROCEEDINGS – INTERSTATE TRANSFER – PROPER VENUE –
APPLICATION OF DISCRETION

REPRESENTATION:

Solicitors:

Plaintiffs: Ward Keller

Defendant: Elvin Lawyers

Judgment category classification: B

Judgment ID number: 06

Number of paragraphs: 25

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

No. 2020-00502-LC

BETWEEN:

PETER WARD

First Plaintiff

AND:

JANE WARD

Second Plaintiff

AND:

NICKITA KNIGHT

First Defendant

AND:

**N KNIGHT PTY LTD TRADING AS
KNIGHT FAMILY LAW
ABN 15 627 212 819**

Second Defendant

DECISION
27 APRIL 2020

L Gordon JR:

1. A Statement of Claim commencing these proceedings was filed in the Darwin Local Court on 13 February 2020. The Claim was served on the Defendants on the 25th and 21st of February respectively, at an address in Melbourne, Victoria¹.

¹ Affidavits of Service deposed by Kyran O'Dwyer and filed 11 March 2020.

2. A Notice of Defence was filed on 27 March 2020 and shortly thereafter an Interlocutory Application on 6 April 2020 seeking the following:
 - a) An Order transferring proceeding 2020-00502-LC from the Local Court at Darwin to the Magistrates' Court of Victoria at Melbourne under Rule 5.03 of the *Local Court (Civil Jurisdiction) Rules 1998* (NT); or
 - b) An Order adjourning proceeding 2020-00502-LC from the Local Court at Darwin to the Magistrates' Court of Victoria at Melbourne under Rule 5.02 of the *Local Court (Civil Jurisdiction) Rules 1998* (NT).
3. On 14 April 2020 the parties communicated to the Court by email confirming an agreement between the parties that the Application to transfer proceedings could be heard on the papers. In light of same, the parties were directed to file written submissions in relation to the Application by close of business 17 April 2020.
4. In doing so on 17 April 2020 the Defendants amended their application to seek the following:
 - a) An Order transferring proceeding 2020-00502-LC from the Local Court at Darwin to the Magistrates' Court of Victoria at Melbourne under Rule 5.03 of the *Local Court (Civil Jurisdiction) Rules 1998* (NT) or to the Supreme Court of the Northern Territory under section 18 of the *Local Court (Civil Procedure) Act 1989* (NT) in the alternative; or
 - b) An Order adjourning proceeding 2020-00502-LC from the Local Court at Darwin to the Magistrates' Court of Victoria at Melbourne or the Supreme Court of the Northern Territory in the alternative under *Rule 5.02 of the Local Court (Civil Jurisdiction) Rules 1998* (NT).
5. For the Plaintiffs, Ward Keller confirmed they took no opposition to this course by way of email dated 17 April which stated:

"I refer to Mr Elvin's email to the Registry on the afternoon of 17 April 2020 seeking that the Court proceed on an Amended Interlocutory Application.

We have considered the scope of the amendments and note that while the Plaintiff Respondent's submissions do not speak directly to the amendments proposed, we do not object to the matter proceeding on the papers tomorrow, 20 April 2020.(sic)"
6. I have now considered the written submissions of both parties and provide these brief reasons in determination of the Defendants Amended Interlocutory Application.

7. The *Local Court (Civil Jurisdiction) Rules 1998* provide:

5.01 Proper venue

(1) *Proceedings are to be commenced in a proper venue of the Court.*

(2) A **proper venue** for the proceedings, is the Court venue that is nearest to:

- (a) *the defendant's residence immediately before the proceedings are commenced; or*
- (b) *the defendant's residence at the time the claim arose; or*
- (c) *the defendant's place of business immediately before the proceedings are commenced; or*
- (d) *the defendant's place of business at the time the claim arose; or*
- (e) *the defendant's place of employment immediately before the proceeding is commenced; or*
- (f) *the defendant's place of employment at the time the claim arose; or*
- (g) *the place where the claim arose.*

(3) *Despite proceedings being commenced in a Court venue that is not a proper venue, the Court may hear and determine the proceedings at the venue at which the proceedings were commenced or at another venue the Court considers appropriate.*

(4) *Proceedings are not void or in any other way affected by reason only that the proceedings were heard and determined at a venue other than a proper venue.*

8. I reject the submission of the Plaintiff²:

“... there are no compelling reasons why Victoria is the more appropriate Court.”

9. I prefer entirely, the submissions of the Defendants with regard to Rule 5.01(2) (references omitted):

12. The Defendants have operated their business from, lived in, and been employed in Melbourne, Victoria, at all times...

13. The legal services the subject matter of the Claim:

² Written Submissions filed 17 April 2020 at 13(b)

(a) Were provided pursuant to a Victorian costs agreement and disclosure statement.

(b) Were provided by a Victorian law firm and a Victorian registered lawyer.

(c) Were provided from the State of Victoria in connection with legal proceedings heard only in Victorian Courts.

14. The primary allegation against the Defendants is their alleged conduct in relation to a hearing in Proceeding DNC34/2018 on 12 March 2019 at Dandenong, Victoria. The Plaintiffs were physically in Victoria for that hearing.

15. Accordingly, the Claim against the defendants arose in Victoria.

10. Despite my findings in this regard, it cannot overcome the reality that there is no power for the Northern Territory Local Court to transfer these proceedings to Victoria.

11. The power of the Local Court to transfer proceedings is found at Rule 5.03 and states that “*The Court may order the transfer of proceedings to another **Court venue.***” (my emphasis)

12. Court venue being³ “*a place approved under section 24 of the Act⁴*” including places and buildings approved by the Minister⁵ and provides that the Court may sit “*at any place, whether in the Territory, or elsewhere...*”⁶.

13. Relevantly, and conclusively, the *Local Court Act 2015 (NT)* defines and establishes the Local Court of the Northern Territory. The power to transfer proceedings established under Rule 5.03 therefore allows for the transfer of proceedings to another venue of the Local Court of the Northern Territory and not to a Court of interstate jurisdiction.

14. Accordingly, the application by the Defendants to transfer proceeding 2020-00502-LC from the Local Court at Darwin to the Magistrates’ Court of Victoria at Melbourne must fail.

³ Per Rule 1.09

⁴ The *Local Court Act 2015 (NT)*

⁵ S24(1)

⁶ S24(6)(a)

15. The Amended Interlocutory Application broadened the relief sought to include an application in the alternative, for the proceedings to be transferred to the Northern Territory Supreme Court.
16. The power to transfer proceedings from the Local Court to the Supreme Court is provided for at section 18 of the *Local Court (Civil Procedure) Act*:

Transfer of proceedings to Supreme Court

- (1) *A party to proceedings (other than an appeal) may apply to the Court for an order that the proceedings be transferred to the Supreme Court.*
- (2) *An application may be made under subsection (1) even if the claim the subject of the proceedings is wholly or partly beyond the jurisdiction of the Court.*
- (3) *On an application under subsection (1), the Court may, if it considers it appropriate to do so, order that the proceedings be transferred to the Supreme Court.*
- (4) *Where an order is made under this section:*
- (a) *the proceedings in the Local Court are discontinued;*
 - (b) *the record and all documents relating to the proceedings must be transmitted by the principal registrar to the Supreme Court; and*
 - (c) *the Supreme Court has power to regulate the procedure in the transferred proceedings.*

17. In relation to transferring proceedings to the Supreme Court Justice Kearney said in *Deans Investments Pty Ltd & ors v Bellview Investments Pty Ltd*⁷ that

“The application to transfer the proceedings Section 18(3) of the Local Court Act confers in the widest terms a discretion to order transfer of the proceedings; the order may be made “if [this Court] considers it appropriate to do so”. The discretion must be exercised with regard to all the circumstances.”

18. In considering whether to exercise my broad discretion in this regard I turn my mind to the nature of the Claim and the foreseeable ramifications of granting the transfer.

⁷ *Deans Investments Pty Ltd & ors v Bellview Investments Pty Ltd* [1997] NTSC 74; references removed.

19. Given that the key objective of the Application for transfer is to have the proceedings heard by a Victorian Court⁸, it is unlikely the dispute regarding venue would be put to rest by an Order transferring the matter to the Supreme Court of the Northern Territory.

20. Indeed the Defendants notes at paragraph 25 of their written submissions:

“The Court should either transfer the proceeding to the Magistrates’ Court of Victoria at Melbourne or transfer it to the Supreme Court of the Northern Territory where it can be then transferred to the proper and appropriate venue in Victoria upon application by the Defendants. (my emphasis).”

21. The total Claim for damages and costs as per the Statement of Claim for an amount of \$66,981.40. Notably the quantum of the claim is founded in legal and Court costs for legal proceedings heard in Victoria.

22. In my view, it is counter intuitive to put the parties to the further costs of an additional and presumably disputed, interlocutory hearing before the Supreme Court to transfer the matter to Victoria. A course which would undoubtedly cause significant delays and inflate costs, purportedly for the purpose of avoiding the Defendants being prejudiced by the anticipated costs of having the matter heard and determined in Darwin.

23. There is a very real risk of parties expending costs compromising a not insignificant percentage of the total claim, before the substantive dispute is even before a Judicial Officer. I cannot accede to this course and cannot find that it is either appropriate or in the interests of justice to do so.

24. Therefore despite my views as to the proper venue set out above. I defer to Rules 5.01 (3) and (4) which provide:

“(3) Despite proceedings being commenced in a Court venue that is not a proper venue, the Court may hear and determine the proceedings at the venue at which the proceedings were commenced...”

“(4) Proceedings are not void or in any other way affected by reason only that the proceedings were heard and determined at a venue other than a proper venue.”

25. Accordingly having found that the Local Court has no power to transfer proceedings to an interstate Court and further, declining to exercise my discretion

⁸ See in particular the prejudice claimed by the Defendants at paragraphs 19 – 22 of the Defendants written submissions.

to transfer the matter to the Supreme Court of the Northern Territory, the Interlocutory Application filed by the Defendants on 17 April 2020 is dismissed.

Orders:

1. The Interlocutory Application filed by the Defendants on 17 April 2020 is dismissed.
2. The Defendants to pay the Plaintiffs costs of and incidental to the application to transfer proceedings, at 100% of the Supreme Court scale on a standard basis, to be agreed or taxed in default of agreement.

Dated this 24 April 2020

LEANNE GORDON
JUDICIAL REGISTRAR