

CITATION: *Big Mike Construction Pty Ltd v ML Global Pty Ltd [2023] NTLC 27*

PARTIES: BIG MIKE CONSTRUCTION PTY LTD
(ABN 78 616 210 845) Plaintiff

v

ML GLOBAL PTY LTD
(ABN 12 150 097 242) First Defendant

And

Peter Dunstan
Second Defendant

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2022-01093-LC

DELIVERED ON: 24 November 2023

DELIVERED AT: Darwin

HEARING DATE(s): 30 October and 21 November 2023

DECISION OF: Judge O'Loughlin

CATCHWORDS:

Pleadings – Particulars – Amendment – Withdrawal of Admissions

REPRESENTATION:

Counsel:

Plaintiff: Z Cleal
First Defendant: Ms Kelly
Second Defendant: J Tippett QC

Solicitors:

Plaintiff: Clayton Utz
First Defendant: Bryson Kelly Legal
Second Defendant: Maleys

Decision category classification: B

Decision ID number: [2023] NTLC 27

Number of paragraphs: 17

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

No. 2022-01093-LC

BETWEEN:

Bike Mike Construction Pty Ltd

Plaintiff

AND:

ML Global Pty Ltd

First Defendant

Peter Dunstan

Second Defendant

REASONS FOR DECISION
(Delivered 24 November 2023)

JUDGE O'LOUGHLIN

Introduction

1. This is the second interlocutory dispute over a relatively modest claim.
2. On the last occasion I ordered the Plaintiff to provide further and better particulars and it did so via letter.
3. The First Defendant requested the Plaintiff include the particulars in an amended Statement of Claim but the Plaintiff declined. The previous solicitors for the First Defendant filed an application seeking an order compelling the Plaintiff to so amend.

4. Additionally, the two Defendants have applied to amend their defences and the Plaintiff objects alleging withdrawal of admissions.

Particulars by Letter

5. Particulars are usually incorporated into pleadings, but occasionally particulars are provided by correspondence only.
6. In my earlier orders I only required the Plaintiff to provide particulars and I did not order they be filed. In these circumstances, and where there can be no doubt as to particulars relied on by the Plaintiff, I will not order the Plaintiff to incorporate those particulars in the Statement of Claim.
7. In doing so I am cognizant of the warning by Allsop J. in *White v Overland* [2001] FCA 1333, Allsop J:
“Any practice of quietly leaving footprints in correspondence or directions hearings to be uncovered some time later in an attempt to reveal that a matter was always in issue should be discouraged firmly”.
8. I accept the logic of the above, but in the circumstances referred to in [6] I will not order an amendment on this occasion.

Second Defendant’s Application to Amend Defence

9. The Plaintiff objects to the proposed amended Defence filed by the Second Defendant claiming the Second Defendant is seeking to withdraw admissions.
10. The Statement of Claim alleges at paragraph 5 that there was a contract between Tiwi Enterprises Limed and the First or Second Defendants where the work was described as “supermarket works”.
11. The Second Defendant originally pleaded he was agent for another entity who subcontracted with the Plaintiff such that it was to be perform the “supermarket works”. This is a pleading that the entirety of the supermarket works were to be performed by the Plaintiff.
12. The amendment would now plead that the work performed by the Plaintiff was to “supply and perform the labour component” only. This is an attempt to withdraw the admission that the Plaintiff was to do all the supermarket works.
13. In *J&L Contracting Pty Ltd v MacMahon Contractors Pty Ltd* [1996] NTSC 85 Master Coulehan stated that amendments to pleadings are usually allowed if they can be effected without prejudice, but a party seeking to withdraw admissions “may require a sensible explanation”. Here there is no explanation proffered by the Second Defendant.
14. The Plaintiff pleaded in paragraph 8 (b) that the Supermarket Works included “supply and installation of vinyl to 310 square meters of floor”. The Second Defendant initially said it “did not know and **cannot admit**” this allegation. It now seeks to plead a denial and plead that the works were for the provision of labour only. This amendment would contradict

the admission in paragraph 6 that the Plaintiff was to do all the supermarket works.

15. The Second Defendant's application to amend his Defence will be refused given the lack of explanation for the attempted withdrawal of admissions.

First Defendant's Application to Amend Defence

16. The First Defendant has recently changed solicitors and I am not sure if its application to amend is still pressed, noting that no submissions were filed by the First Defendant.
17. My preliminary view is that the First Defendant is seeking to withdraw admission in paragraph 5, but I will hear the parties further if necessary.

Orders

1. The First Defendant's application to compel the Plaintiff to amend the Statement of Claim is dismissed;
2. The Second Defendant's application to amend his Defence is refused;
3. Costs Reserved.