

CITATION: JGA Concreting Pty Limited v Karpasitis [2017] NTLC 023

PARTIES: JGA CONCRETING PTY LIMITED
v
PANAYIOTIS KARPASITIS

TITLE OF COURT: Local Court

JURISDICTION: Civil

FILE NO: 21644962

DELIVERED ON: 16 June 2017

DELIVERED AT: Darwin

HEARING DATES: 9 and 16 June 2017

JUDGMENT OF: Judge Neill

CATCHWORDS:

Right of appeal from registrar to Local Court judge in civil proceedings; exercise by Northern Territory Local Court of judicial power of the Commonwealth.

Local Court Act

Local Court (Civil Jurisdiction) Rules

Harris v Caladine (1991)172 CLR 84

NAAJA & Anor v NT of A (2015) 256 CLR 569

REPRESENTATION:

Counsel:

Plaintiff: Mr Hamish Baddeley

Defendant: Mr Vincent Close

Solicitors:

Plaintiff: De Silva Hebron

Defendant: Bowden McCormack

Judgment category classification: A

Judgment ID number: [2017] NTLC 023

Number of paragraphs: 17

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

No. 21644962

BETWEEN:

JGA Concreting Pty Limited
Plaintiff

AND:

Panayiotis Karpasitis
Defendant

REASONS FOR JUDGEMENT

(Delivered 16 June 2017)

Judge Neill:

1. The Plaintiff commenced proceedings against the Defendant for \$59,916 plus interest and costs by Statement of Claim filed on 22 September 2016 in the civil jurisdiction of the Local Court. The Defendant was personally served with the Statement of Claim on 13 October 2016. The Defendant took no action in response and judgement in default of Defence was entered for the Plaintiff on 25 November 2016 for \$59,916 debt, \$2,469 costs and \$509.22 interest, a total of \$62,894.22.
2. The Plaintiff caused a Warrant of Execution to issue on 20 December 2016 to enforce its judgement. The Defendant then applied on 19 January 2017 to set aside the default judgement. This application came before Judicial Registrar Johnson on 27 February 2017. The Defendant appeared in person. The Plaintiff was legally represented. Both parties filed affidavits in support of their respective positions. That application was heard and dismissed with costs against the Defendant on 27 February 2017.
3. By Notice of Appeal filed 12 April 2017 the Defendant sought to appeal to a judge of the Local Court from the decision of the judicial registrar

dismissing the Defendant's application to set aside the default judgement. Because the Notice of Appeal was filed later than 28 days after that decision of the judicial registrar, the Defendant also separately applied for leave to file his appeal out of time.

Right of Appeal

4. The appeal and the application for leave to appeal came before me on 8 and 9 May 2017 when both parties were legally represented. Mr Baddeley of counsel for the Plaintiff submitted that as at the date of the judicial registrar's decision on 27 February 2017 there was effectively no longer any provision for an appeal from a judicial registrar to a Local Court judge in civil proceedings. This, he submitted, was because a previous broad right of appeal to a judge contained in rule 4 of the Rules had been deleted from the ongoing *Local Court (Civil Jurisdiction) Rules* as part of the Local Court amendments which came into force on 3 May 2016. That broad right of appeal had not been reproduced in the new *Local Court Act*, the *Local Court (General) Rules* or the new *Local Court (Civil Procedure) Act*.
5. Sub section 75(2) of the *Local Court Act* does now provide for an appeal to a judge from a decision of a registrar, but sub section 75(1) limits that to where the registrar has made "...a decision in proceedings in the exercise of a power delegated under section 74".
6. Section 74 empowers the Rules of the Local Court to delegate to a registrar "...any of the Court's powers in the exercise of its discretion". There are some limits on this set out in sub sections (2), (3) and (4) which are not relevant for present purposes.
7. However since 3 May 2016 the judicial registrar derives his power to sit as the Local Court in civil proceedings from sub section 6(2) of the *Local Court Act* and not from the Rules under that Act. Section 69(b) of the *Local Court Act* does allow the Rules to confer functions to be performed by a judicial registrar but to date the Rules have not conferred any such functions.
8. Mr Close of counsel for the Defendant conceded the previous right of appeal had been deleted. However he submitted that the Local Court had an implied power to allow appeals from a judicial registrar to a Local Court judge in civil proceedings, even where the judicial registrar was exercising the jurisdiction of the Court pursuant to sub section 6(2) of the *Local Court Act*. I heard argument on this point on 9 May 2017 and I ruled that to find such a right of appeal in the absence of any statutory

provision would be well beyond the implied powers of a statutory court such as the Local Court.

9. I rule that since 3 May 2016 there is no provision under the *Local Court Act* or Rules in civil proceedings for an appeal from a registrar, including a judicial registrar, to a judge where the powers exercised by the registrar were pursuant to sub section 6(2) of the *Local Court Act* rather than having been delegated pursuant to the *Local Court (Civil Jurisdiction) Rules*.
10. I rule that the powers exercised by Judicial Registrar Johnson on 27 February 2017 when he heard and then dismissed the Defendant's application to set aside the default judgment in this proceeding were exercised pursuant to sub section 6(2) of the Act rather than delegated pursuant to the Rules.
11. I rule that no appeal lies to a judge of the Local Court from the decision of Judicial Registrar Johnson delivered on 27 February 2017 in this proceeding.

Exercise of the Judicial Power of the Commonwealth

12. My conclusion that there is no longer any right or avenue of appeal to a Local Court judge from most decisions of the judicial registrar of the Local Court in its civil jurisdiction caused me to consider the validity of such decisions. This was because the Local Court exists by way of Northern Territory legislation passed pursuant to the *Northern Territory (Self-Government) Act 1978*, which is Commonwealth legislation. Does this mean that any exercise of judicial power pursuant to NT legislation is itself an exercise of the judicial power of the Commonwealth?
13. The exercise of the judicial power of the Commonwealth is subject to Section 71 of the Constitution. In *Harris v Caladine* (1991) 172 CLR 84 the High Court considered the effect of this on the validity of the delegation of judicial power to officers of Federal Courts - in particular to registrars of the Family Court of Australia. It held in that case that the delegation of the judicial power of the Commonwealth to such registrars was valid provided that: i) the delegation is not so broad as to suggest that the judges no longer constitute the Court, and ii) the decisions pursuant to that delegation are subject to review or appeal by or to a judge or judges of the Court. I have found there is no longer any such review or appeal from registrars exercising the civil jurisdiction of the NT Local Court in most cases.

14. I requested and received written submissions on this question from both counsel in this matter. I have found those submissions of great assistance. I am satisfied the question has previously been considered and answered.
15. The question was most recently considered by Keane and Gaegler JJ of the High Court in *North Australian Aboriginal Justice Agency Limited & Anor v Northern Territory of Australia* (2015) 256 CLR 569. Keane J said at paragraphs [172] to [174]:

“The plaintiffs put their argument in relation to the separation of powers in another way, arguing that the courts of the Northern Territory are “always and only” exercising federal jurisdiction, either directly when applying federal legislation, or indirectly when applying laws that derive from the Self-Government Act and, ultimately, from section 122 (of the Constitution). This argument cannot be sustained.

“The courts of the Northern Territory are not federal courts created by the Commonwealth Parliament within the meaning of section 71 of the Constitution, and their enforcement of Div 4AA [being the NT legislation there being considered] does not involve any exercise of federal jurisdiction invested pursuant to a law made by the Commonwealth Parliament under section 122 of the Constitution. Northern Territory courts can and do exercise the judicial power of the Commonwealth pursuant to laws made by the Commonwealth Parliament, but that is not all they do...**The courts of the Northern Territory exercise the judicial power of the Commonwealth only to the extent that it is expressly vested in them by the Commonwealth Parliament pursuant to a law made under s 122 of the Constitution** (emphasis added).”

16. I am satisfied therefore that except in the circumstance where the Local Court might be exercising judicial power of the Commonwealth expressly vested in it as above, there is no requirement that there be a right of appeal or review to a Local Court judge from a decision of a Local Court registrar exercising civil jurisdiction.
17. However, in the limited circumstance where the Local Court in its civil jurisdiction is exercising the judicial power of the Commonwealth such power must be exercised by a judge and not by a registrar, at least until the legislation is amended to provide for an appeal from a registrar to a judge of the Local Court.

Dated this 5th day of September 2017.

John Neill
LOCAL COURT JUDGE