

Ryan v Compass Group Pty Ltd & Ors [2007] NTSC 66

PARTIES MICHAEL WAYNE RYAN v COMPASS GROUP PTY LTD
& ORS
TITLE OF COURT SUPREME COURT OF THE NORTHERN TERRITORY
OF AUSTRALIA AT DARWIN
JURISDICTION Civil
FILE NUMBER 25 of 2005 (20504486)
DELIVERED 6 September 2007
HEARING DATE 2 August 2007
REASONS OF The Master

CATCHWORDS

PRACTICE – Northern Territory – Supreme Court Rules – Order 6.09 – Service
Impracticable - Substituted Service

CASES FOLLOWED

Foxe v Brown (1984) 58 ALR 542
O’Neil v Acott (1988) 59 NTR 1
Re Otway Coal Co. Ltd (1953) VLR 557

CASES REFERRED TO

Centralian Industries v Johnston (1997) 1 V.R. 118

REPRESENTATION

Solicitors:

Plaintiff Morgan Buckley
Defendant De Silva Hebron

Judgment category classification

Judgment ID number mas1607

Number of pages 4

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT DARWIN

No. 25 of 2005 (20504486)

BETWEEN:

MICHAEL WAYNE RYAN

Plaintiff

and

**COMPASS GROUP (AUSTRALIA) PTY
LTD (ACN 00 683 150) formerly known
as EUREST (AUSTRALIA) SUPPORT
SERVICES PTY LTD**

1st Defendant

**EUREST SERVICES DE SUPORTE
(TIMOR LESTE) SA**

2nd Defendant

**PROSAFE RIGS LIMITED
(ABN 46 103 055 429)**

3rd Defendant

**CONOCOPHILLIPS JDPA PTY LTD
(ACN 097 445 942)**

4th Defendant

PROSAFE OFFSHORE LIMITED

5th Defendant

PROSAFE RIGS

6th Defendant

**PROSAFE PRODUCTION SERVICES
PTE**

7th Defendant

**PHILLIPS PETROLEUM (91-12) PTY
LTD (ACN 064 963 346)**

8th Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered: 6 September 2007)

- [1] The plaintiff claims that he suffered injuries on 22 August 2003 when he slipped and fell while attending the mess on an accommodation support vessel operating in the Timor Sea. It is alleged that the second defendant had engaged the plaintiff to undertake welding inspection services on the Bayu-Undan drilling project and that it owed him a duty of care in relation to the safety of the mess hall. The address of the second defendant identified in the writ is an address in Timor Leste. The plaintiff has had difficulty serving the writ and has applied for an order for substituted service on the first defendant.
- [2] The plaintiff has adduced evidence of enquiries made in Timor Leste by Dr. de Oliveira as to the status of the second defendant. Its name is "Eurest Servicos De Suporte SA", which is not identical to the name on the writ. It is registered but is no longer trading, its registered office being occupied by another business entity. The company is owned by Eurest Australia (Support Services) Pty. Ltd. The first defendant was formerly known by this name, and there is documentation that suggests that this company was utilising the second defendant to provide catering services to the Bayu-Undan project. According to Dr. de Oliveira, legal documents may be served on the Chief Representative of the company, and if no such person is nominated, the director of the company is deemed to be the Chief Representative. Kenneth James Younger is named as the director of the second defendant.
- [3] The plaintiff's solicitors have made enquiries as to the whereabouts of Mr. Younger. On 25 June 2007 Mr. Robison spoke by telephone with a person who identified himself as Mr. Younger's father, who said that he had not spoken to his son for about seven years but believed him to be in Sudan, Africa. Mr. Younger senior also mentioned "Compass" and "ESS" in connection with his son's email address. There is evidence that suggests that it is impracticable to serve process in Sudan. The most recent information, provided by Mr. Younger senior on 12 July 2007, is that his son was working in Iraq with another company. He was unable to offer any further information. There is no evidence of any attempt to locate and serve Mr. Younger junior in Iraq, or as to any difficulties that may be involved.
- [4] The first defendant has appeared to oppose the order sought. It relies on an affidavit sworn by its solicitor on 12 July 2007 in which he deposes to information provided by the General Counsel for the first defendant. The

information is to the effect that the second defendant has been de-registered and no longer trades, that there is no “current connection” between the first defendant and the second defendant, and that the first defendant is not in any way related to Kenneth James Younger. It may be noted that no information has been offered as to what the connection was, when it ceased, when the second defendant ceased to trade, what relationship with Mr. Younger previously existed, when it ceased, and what was known as to his whereabouts. In addition, the statement as to the de-registration of the second defendant is contrary to the evidence of Dr. de Oliveira. Counsel for the first defendant said that he did not rely on this statement.

- [5] It was submitted that the plaintiff may serve the writ outside Australia pursuant to O. 7.01(1)(n). There was no argument to the contrary. I am satisfied that this proceeding was properly brought against the defendants served and that the second defendant is out of Australia and is a necessary and proper party to the proceeding. However, there is no address for service in Timor Leste, and the only known director has proved difficult to locate and serve.
- [6] O.6.09 provides that where it is impracticable to serve a document in the manner required by the Rules the Court may order that, instead of service, such steps be taken as it specifies for the purposes of bringing the document to the notice of the person to be served. As to whether or not it is impracticable to serve a document, the standard is one of reasonableness, so as to show the practical impossibility of actual service (see *Foxe v Brown* (1984) 58 ALR 542, 547 and *O’Neil v Acott* (1988) 59 NTR 1, 4). It is not possible to serve the writ on the registered office of the second defendant. Its director, Mr. Younger junior, appears to lead a peripatetic life-style in exotic places, and the evidence suggests that he is no longer in the employment of the second defendant. If he was served with the writ, he would be unlikely to take any action on behalf of the second defendant, except, perhaps, to refer it to the first defendant. In the circumstances, it would be unreasonable to require the plaintiff to further attempt to serve the writ on Mr. Younger junior. In effect, it is not possible to serve the writ on the second defendant, that is, it is impracticable to serve the writ in the manner required by the Rules.
- [7] O.6.09 requires that steps be taken that would bring the writ to the notice of the second defendant, but available steps are limited because the second defendant is, for all practical purposes, defunct. Courts have been flexible in this regard. In *O’Neil v Acott* the Full Court upheld an order for substituted service on the third party insurer when the defendant could not be found. In *Re Otway Coal Co. Ltd.* [1953] V.L.R. 557, where there were no means of effecting service on a company, the court ordered that there be substituted service on the largest shareholder. This case was referred

to, with apparent approval, in *Centralian Industries v Johnston* [1997] 1 V.R. 118.

[8] The first defendant appears to be the only entity that has any interest in the affairs of the second defendant. In the unusual circumstances of this case, it would be in the interests of justice to follow *Re Otway Coal*. It is appropriate that there be substituted service of the writ on the first defendant. Before effecting service, the plaintiff should consider whether the second defendant is properly named in the writ.

[9] It will be ordered that:

(1) The plaintiff serve of a copy of this order and a sealed copy of the writ in this proceeding on Compass Group (Australia) Pty. Ltd. (ACN 000 683 150) for the purpose of bringing the writ to the notice of the second defendant.

(2) On service in accordance with paragraph (1) of this order, the writ will be taken to have been served on the second defendant
