CITATION:	*Eccles v Nikki Beach 1 Pty Ltd & Anor* [2019] NTSC 39
PARTIES:	ECCLES, Matthew v NIKKI BEACH 1 PTY LTD and DOYLE, Lee
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from LOCAL COURT exercising Territory jurisdiction
FILE NO:	LCA 12 of 2019 (21843528)
DELIVERED ON:	30 May 2019
HEARING DATE:	2 and 30 May 2019
JUDGMENT OF:	Grant CJ

CATCHWORDS:

PRACTICE AND PROCEDURE – APPEALS – EXTENSION OF TIME – SUMMARY JUDGMENT

Whether failure to institute appeal within time due to "exceptional circumstances" – application for extension of time for appeal against summary judgment refused – appeal against costs order contingent on establishing Local Court entered summary judgment in error – summary judgment only entered if no real question to be tried – where ultimate outcome turns on disputed issues of fact party not to be deprived of opportunity for trial of case – clear case for exercise of power to prevent delay and unnecessary expense.

CONVEYANCING – LEASES

No evidence second respondent had authority asserted by applicant – no evidence of representation by first respondent to applicant which clothed second respondent with ostensible authority – no act of part performance or other matter giving rise to equitable lease.

Local Court (Civil Procedure) Act 1989 (NT) s 19

Advance Civil Engineering Pty Ltd v Norbuilt Pty Ltd [1996] NTSC 45; *Australian Can Co Pty Ltd v Levin and Co Pty Ltd* [1947] VLR 332; *Civil and Civic Pty Ltd v Pioneer Concrete (NT) Pty Ltd* [1991] NTSC 3; *Clarke v Union Bank of Australia Ltd* (1917) 23 CLR 5; *Fancourt v Mercantile Credits Limited* (1983) 154 CLR 87; *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125; *Heller Financial Services Ltd v Solczaniuk* [1989] NTSC 36; *Re Registered Trade Mark "Certina"* (1970) 44 ALJR 191; *Thrifty Rent-a-Car Pty Ltd v Darwin Marketing Services Pty Ltd* (1987) 99 FLR 304, referred to.

REPRESENTATION:

Counsel:

Applicant:	Self-represented
First Respondent:	RP Sanders
Second Respondent	C Davidson

Solicitors:

Applicant:	Self-represented
First Respondent:	HWL Ebsworth Lawyers
Second Respondent:	Spark Helmore Lawyers

Judgment category classification:	B
Judgment ID Number:	GRA1911
Number of pages:	6

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

Eccles v Nikki Beach 1 Pty Ltd & Anor [2019] NTSC 39
LCA 12 of 2019 (21843528)

BETWEEN:

MATTHEW ECCLES
Applicant

AND:

NIKKI BEACH 1 PTY LTD
First Respondent

AND:

LEE DOYLE
Second Respondent

CORAM: GRANT CJ

REASONS FOR JUDGMENT

(Delivered *ex tempore* 30 May 2019)

[1] By Statement of Claim filed in the Local Court on 12 October 2018 the applicant sought an order for specific performance of a lease alleged to have been entered into at some time in September 2018 and, or in the alternative, damages for breach of the conditions of the lease. The first respondent is the owner of the land in question. The second respondent is the real estate agent who was negotiating with the applicant in relation to a lease of the land.

[2] The respondents made application for summary judgment which was heard by the Local Court on 20 December 2018 and 17 January 2019. By reasons delivered on 6 March 2019, the Local Court made an order for summary judgment in favour of the respondents. By orders made on 15 March 2019, the Local Court stayed the first respondent's Counterclaim and ordered that the applicant pay the respondents' costs of the proceeding.

[3] On 12 April 2019 the applicant filed an application for leave to appeal against the decision entering summary judgment and awarding costs in favour of the respondents, and a notice of appeal against the costs order made on 15 March 2019. The application and appeal are brought pursuant to s 19 of the *Local Court (Civil Procedure) Act 1989* (NT). That section provides that a party to proceedings may appeal on a question of law from a final order of the Local Court within 28 days, or with the leave of the Supreme Court after the expiration of 28 days. The application in relation to the order for summary judgment was made outside the 28 day period. The appeal against the order for costs was brought within time. Neither the notice of appeal nor the application for leave discloses the parts of the judgments which are subject to appeal, or the grounds of appeal.

[4] The respondents have made application to have the appeals dismissed as incompetent. When the application was listed for hearing on 2 May 2019 I heard submissions from the parties. The applicant was self-

represented at that time. At the conclusion of submissions he took up the offer of an adjournment to allow him to take legal advice in relation to the matter. The application was adjourned to 30 May 2019 for that purpose.

[5] The order for summary judgment is properly characterised as a "final order" as it finally determined the rights of the parties in relation to the applicant's claim. Section 19(2) of the *Local Court (Civil Procedure) Act* provides that this Court may grant leave if it is of the opinion that the failure to institute the appeal within time was due to "exceptional circumstances", and is satisfied that the case of the other parties to the appeal would not be materially prejudiced because of the delay. The term "exceptional" in this context is to be construed as an ordinary and familiar adjective. It describes a circumstance which forms an exception which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.

[6] The only matter to which the applicant can point in this case is the fact that he was unrepresented both in the Local Court and in the prosecution of this application, and that his personal and business affairs were disrupted and affected by the respondent's denial of a lease arrangement. Those are not exceptional circumstances in the relevant sense, particularly having regard to the fact that the events in

question took place in September 2018 and the decisions sought to be appealed were delivered in March 2019. More than that, on 14 March 2019 the applicant made an affidavit deposing that he had engaged legal representation for the purpose of lodging an appeal against the order for summary judgment. The applicant clearly knew of the right of appeal at that time, but did not pursue that right in a timely fashion. Accordingly, the application for an extension of time within which to press the appeal against summary judgment must be refused.

[7] That leaves the appeal against the costs order. The applicant's prospects of success in that appeal are entirely contingent on establishing that the Local Court entered summary judgment in error. For the reasons I have just given, the application for an extension of time within which to bring an appeal against that judgment is refused. Accordingly, there is no basis on which the appeal against the costs order could conceivably succeed.

[8] I should also say something about the basis for the entry of summary judgment by the Local Court. The rules governing the determination of applications of this kind are well established. Summary judgment should only be entered if there is no real question to be tried.[1] Where the ultimate outcome of the matter turns on the resolution of some disputed issue or issues of fact, it is essential that great care is

1 *Clarke v Union Bank of Australia Ltd* (1917) 23 CLR 5; *Fancourt v Mercantile Credits Limited* (1983) 154 CLR 87 at [99]; *Thrifty Rent-a-Car Pty Ltd v Darwin Marketing Services Pty Ltd* [1987] NTSC 67 at [14]; *Heller Financial Services Ltd v Solczaniuk* [1989] NTSC 36 at [53]; 99 FLR 304.

exercised to ensure that a party is not deprived of opportunity for the trial of the case.[2] Where the case is clear, however, the exercise of the power will obviate the delay involved in a hearing and save unnecessary expense.[3]

[9] In the present matter, even if the applicant's case is taken at its highest, it is that the second respondent, and a predecessor agent, represented to him that they had authority to enter into a lease on behalf of the first respondent, and did in fact do so. Those matters were the subject of dispute before the Local Court, but even if the applicant's case was accepted in its entirety it would not establish the existence of an enforceable lease.

[10] There was no evidence that the second respondent had the authority asserted. The evidence was all the other way. There was also no evidence of any representation by the first respondent to the applicant which might have clothed the second respondent or the predecessor agent with ostensible authority. There was no act of part performance or other matter which might have given rise to an equitable lease. The applicant's case could not be made out on the evidence, and summary judgment was properly entered.

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2 *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 130 (cited in *Advance Civil Engineering Pty Ltd v Norbuilt Pty Ltd* [1996] NTSC 45 at [33]); *Re Registered Trade Mark "Certina"* (1970) 44 ALJR 191 (cited in *Civil and Civic Pty Ltd v Pioneer Concrete (NT) Pty Ltd* [1991] NTSC 3 at [60]). Where there is a real case to be investigated either in fact or in law, leave to defend should be given: *Australian Can Co Pty Ltd v Levin and Co Pty Ltd* [1947] VLR 332 at 334 (cited with approval in *Thrifty Rent-a-Car Pty Ltd v Darwin Marketing Services Pty Ltd* [1987] NTSC 67 at [15]).

3 *Re Registered Trade Mark "Certina"* (1970) 44 ALJR 191 at 192.

[11] I make the following orders:

1. The application for leave to appeal is dismissed.

2. The appeal is dismissed.

3. The applicant is to pay the respondents' costs of and incidental to the application and appeal on the standard basis.
