

DISTRICT COURT OF QUEENSLAND

CITATION: *Body Corporate Scheme for Arila Lodge Community Titles Scheme 14237 v Thompson* [2020] QDC 133

PARTIES: **BODY CORPORATE SCHEME FOR ARILA LODGE CTS 14237**
(plaintiff)
v
EMMA THOMPSON
(defendant)

FILE NO/S: 2865 of 2018

DIVISION: Civil

PROCEEDING: Mention

ORIGINATING COURT: District Court of Queensland

DELIVERED ON: 22 May 2020 (delivered ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 22 May 2020

JUDGE: Porter QC DCJ

ORDER:

1. The time for the Defendant to file and serve any affidavits she wishes to rely upon at trial as her evidence-in-chief is extended to 12 June 2020.
2. The time for the Plaintiff to file and serve any affidavit it wishes to rely upon at trial as its evidence-in-chief in reply to the Defendant's evidence-in-chief is extended to 3 July 2020.
3. By 10 July 2020 the Plaintiff and Defendant are to confirm with the other party which witnesses they require at trial for cross-examination.
4. The Defendant pays the Plaintiff's costs of the mention on the indemnity basis.
5. The matter is listed for mention before His Honour Porter QC DCJ at 9am on 16 June 2020.

COUNSEL: B Strangman (plaintiff)
C Lundy (*solicitor*) (defendant)

SOLICITORS: Grace Lawyers (plaintiff)
Lundy Lawyers (defendant)

1. I'm taking an unusual step in this case of giving some reasons regarding a matter which I thought would be ready for trial. This matter is a complicated one. It has a long and extremely unfortunate history. In it, the plaintiff, a small body corporate, with only some half dozen lot holders or so, is suing the defendant Ms Thompson in respect of some amount to do with levies. Those amounts, while not insignificant for a small body corporate, are modest compared with the additional claim for legal fees under the statutory right to recover such fees reasonably incurred under the relevant accommodation module.

2. I've been endeavouring to manage this case to a trial for some time. The trial is listed before Judge Reid commencing 17 August for 4 days. The directions I made on the 7th of February, over 3 months ago, were directed to have this matter ready for trial by the end of June. I heard a summary judgment application after I made those directions. That summary judgment application was ultimately not pressed by Ms Thompson and rightly so. At the time that I made the directions in February 2020, I had either already made or soon after made an order that no application be filed in this proceeding without my leave. I made that order in a context of interlocutory skirmishing which seemed to be both unproductive and utterly disproportionate to the costs involved in the case.
3. In the course of this litigation and possibly its preceding dealings between the parties, Ms Thompson has had many solicitors, at least 5 up to today. I have only dealt with one, Mr Abaza, who was involved bringing where an application which, for the reasons I gave then^[1], seemed to be misconceived in a number of ways. Expecting and hoping that Ms Thompson, who was acting for herself would be able to tell me today that her affidavits would be ready by the 29th of May, as I had directed over three months ago, I was met today by another solicitor, Mr Londy, who appeared having been appointed yesterday – the day before this directions hearing – over 3 months after I gave directions that would have had this matter almost ready for trial by now.

[1] *Body Corporate Scheme for Arila Lodge Community Titles Scheme 14237 v Thompson* [2019] QDC 272

4. Mr Londy appeared and submitted that the defence was disorganised and confusing. A fair comment. He sought leave to amend the defence. He was not able to undertake to me that no new issue would be introduced, and understandably. He was not able, even though he thought the general issue was the reasonableness of the costs, to undertake to me there was no other issue of substance in the defence that would be pressed. I was tempted to make directions for the delivery of a proposed amended pleading and for the plaintiff to express objection to leave being granted or not. But Mr Strangman submitted to me that, given the history of delay in the matter, of the redrafting the defence on previous occasions and of the costs being incurred in dealing with the inefficient way the litigation has been conducted, that I should not facilitate further amendments to the defence. In the extraordinary circumstances of this case, I agree.
5. That is not to say that Mr Londy cannot put forward a proposed amended defence, which does simplify the issues in the case and which doesn't add any new issues, in a way that doesn't require Mr Strangman and his solicitors yet again to assess the evidence they lead in this matter. But I am not going to facilitate it. Mr Londy, as is the lot of solicitors brought in at the last minute in cases with a long and unfortunate history, understandably seeks some more time to file his clients' evidence in chief. Mr Strangman didn't oppose that, and I propose to make directions extending by another two weeks, the time for filing of Ms Thompson's affidavits. She has a week to go so now she has 3 weeks.
6. In that time I expect Mr Londy to identify what the real issue he wants to advance in the defence is, and if an amended defence can't be agreed, to file the affidavit evidence that supports the case on those matters that he wishes to advance and communicates clearly to the other side the parts of the existing defence that would not be pressed. The plaintiff will then be in a position to work out, by the 3rd of July, what, if any evidence in chief in reply is required, and then I will amend the date for the question notification of cross examination/witnesses required for cross examination until the 10th of July.
7. I said this matter is going to be heard by Judge Reid and it is. But I will list the matter for mention before me on the 16th of June at 9:00am.
8. The other point that was raised by Mr Londy, really as a matter of courtesy to the court, was to inform me that his client was going to seek to have the bills of Grace Lawyers, which are already the subject of these proceedings, assessed on the basis that Ms Thompson is a third party payer under the costs provisions of the *Legal Profession Act 2007* (Qld). I note that the effect of that will be to, in another place in another way, investigate the underlying issue that is the subject of these proceedings, which have been before the court for a long time and are soon to be ready for trial, and if not ready for trial, will not be through no fault of the plaintiffs.
9. Mr Londy considers that his client has standing to seek that assessment, and presumably at this stage has formed the view that it's not an abuse of process to do so. It seems inevitable that by opening up yet another front in this dispute, costs are going to be incurred. Based on what Mr Strangman told me, this matter (of third party assessment) has been raised before and the issue between the parties was whether Ms Thompson accepted that she had a legal liability to pay the costs and that if she did, assessment would be welcomed by the plaintiffs. I'm not assuming that that's exactly what happened of course, meaning no disrespect to Mr Strangman, because there might be reasons why minds differ about exactly what was said and why. But I am willing to assume this matter has at least been raised before.
10. All of that really leads to two points. One, as a matter of law is it open to do this, and what effect will it have on the statutory entitlement? And second is whether even it is open to do this now, whether in the particular circumstance of this case it's an abuse of process to begin that process now. I don't have any fixed view about either p

oint. What is clear is that it will open a new and expensive front in this litigation yet again, which could on any view have been raised at any time by any of the numerous solicitors proceeding Mr Londy and as I understand, was raised on an occasion.

11. I can't see how I can do anything more on a directions hearing to cause this dispute to be resolved in a cost efficient and effective manner. All I can do is make the directions I've made in this proceeding. I maintain the direction there is to be no application to be filed in this proceeding without first seeking leave by notice to my associate and not any other judge's associate. Unfortunately, it will then be up to the plaintiff to respond to this process in whatever way seems correct.
12. For those reasons, I have made the very limited directions I have made. The defendant will pay the plaintiff's costs of this mention on an indemnity basis.

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Body Corporate Scheme for Arila Lodge v Thompson [2020] QDC 133	District Court of Queensland	22 May 2020	
Body Corporate Scheme for Arila Lodge v Thompson [2019] QDC 272	District Court of Queensland	10 Nov 2019	

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Legal Profession Act 2007 (QLD)	1 citation

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