
INGLIS AND ANOTHER

v.

COMMONWEALTH TRADING BANK OF
AUSTRALIA

ORIGINAL

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Friday 2nd October 1970

INGLIS & ANOTHER

v.

COMMONWEALTH TRADING BANK OF AUSTRALIA

JUDGMENT
(ORAL)

WALSH J.

INGLIS & ANOTHER

v.

COMMONWEALTH TRADING BANK OF AUSTRALIA

On 4th September 1970, the defendant in this action caused to be issued a summons seeking an order that the time for filing and serving the defendant's defence be extended until the date two calendar months after the order of the Full Court determining the appeal lodged by the plaintiffs on 25th August 1970, and seeking costs.

At the same time application was made to me in Chambers to make a special order, pursuant to the rules, that the summons itself should operate as a stay of proceedings and I did so.

On 10th August 1970 I gave my decision on a summons which had been on behalf of the defendant on 19th February 1970 and which was subsequently amended.

I made three orders on that summons, one dealing with the main application which had been made by it in relation to striking out portions of the amended statement of claim, one dealing with costs and the other, which was the second of the three orders made, being an order that the defence to the amended statement of claim might be delivered up to 7th September 1970.

The defendant's advisers apparently feared that because I had made that order in relation to the time for delivering defence, the defendant would be in jeopardy if the 7th September were allowed to pass without a defence having been delivered and without any further order having been made. Accordingly, they sought by telegram consent of the plaintiffs to an extension of time for the filing of the

defence and in doing so they sought that the extended time should be a further two months whereas, under the order that I had made, the time as from the date of that order would have been four weeks.

The plaintiffs did not consent and shortly afterwards they filed a Notice of Appeal, on 25th August 1970, which was expressed to be an appeal only against the first of the orders which I had made, in relation to the relevant summons, on 10th August 1970.

The defendant's advisers then apparently took the view that there having been no appeal against the order relating to the time, that was a matter in respect of which a further order should be sought from me, and the summons to which I have referred was taken out.

As was indicated by the request for consent, what the defendant asked was that the time be extended for two months after the order of the Full Court determining the appeal; in other words, they wanted two months from the time when the matter had been dealt with by the Full Court.

It has been submitted on behalf of the defendant that as a matter of strict construction of the Rules of this Court, the lodging of the appeal on 25th August 1970, and indeed, the lodging of a subsequent appeal, to which I need not refer in detail, do not have the effect of extending the time for pleading. It is possible that that is so. I think it unnecessary in the present circumstances to trouble myself about working out what precisely is the proper construction of the relevant Rules.

It is clear that the plaintiffs contend that the

defendant is not obliged to deliver a defence until the matter has been dealt with by the Full Court, and indeed, the plaintiffs urge strongly that the defendant would not be entitled to do so. In a practical sense, apart from the specific provision of any particular rule, it would seem to be clear that the defendant cannot be required to deliver a defence during the time when an appeal is pending in respect of an order which affects the contents of the amended statement of claim, to which the defendant is to plead.

To put on a defence to that amended statement of claim, either in its original form or in the form it would take after effect was given to my orders striking out portions of it, would be a fruitless exercise because it may well be that as a result of the Full Court's determination on the matter it will be some different pleading to which the defendant will be required to put on its defence.

In these circumstances I am of opinion that there is no need at present for me to make any order in relation to the time within which the defendant should deliver a defence. I think that matter can be dealt with by the Full Court if it thinks fit to deal with it, and if it does not think fit to deal with it, it can be dealt with, if necessary, by application made to a Justice after the Full Court has determined the matter.

In those circumstances, as I have said, I do not think any order is needed from me at the present time, nor do I think I should make any order as sought in the summons of 4th September 1970. There has been a debate about what should be the proper order as to costs. In the circumstances

I think it is right to say there should be no order as to costs. On the summons filed by the defendant of the 4th September 1970 I order that the summons be dismissed with no order as to costs.