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T.N.T. MANAGEMENT PTY. LIMITED TRADING
UNDER THE NAME OF "ALLTRANS INTERNATIONAL"
AND ALL TRANS EXPRESS (S) P.T.E. L.T.D.

v.

KARLANDER (AUST.) PTY. LIMITED, GAINTOP
MARITIME & ENTERPRISES (PANAMA) INC. AND
EVOLUTION MARITIME & ENTERPRISES LIMITED

JUDGMENT
(ORAL)

WILSON J.

T.N.T. MANAGEMENT PTY. LIMITED TRADING
UNDER THE NAME OF "ALLTRANS INTERNATIONAL"
AND ALL TRANS EXPRESS (S) P.T.E. L.T.D.

v.

KARLANDER (AUST.) PTY. LIMITED, GAINTOP
MARITIME & ENTERPRISES (PANAMA) INC. AND
EVOLUTION MARITIME & ENTERPRISES LIMITED

This is an ex parte motion made by the first and second plaintiffs in the action seeking, in the first place, a renewal of the writ of summons and, in the second place, leave to serve notice of the writ outside the Commonwealth on the second and third defendants respectively.

So far as the renewal of the writ is concerned, it was first issued in May 1983 and will expire later this month unless renewed. The application is made pursuant to O. 8 r. 2 which applies where a defendant named in the writ has not been served with it. The plaintiff may, before the expiration of twelve months from the day of the date of the writ, apply to a Justice for leave to renew the writ; and the Justice if satisfied that reasonable efforts have been made to serve the defendant, or for other good reason, may order that the original writ be renewed for six months from the date of the renewal inclusive.

This is not a case where reasonable efforts have been made to serve the defendants. Mr. Street submits that the circumstances satisfy the other ground on which the writ may be renewed, namely for other good reason. The affidavit filed in support of the motion indicates that the reason upon which reliance is made lies in the nature of the proceedings and the complexity of the considerations that pertain to proceedings such as these.

The question of possible prejudice to the defendants has been ventilated as to whether some requirement should be made that the defendants should in fact be served within a specified time in order that they should not be liable to suffer any prejudice, or any further prejudice, by reason of notice of the action not coming to their attention. However, in the circumstances, I am satisfied that there is reason here to support the motion and that the writ should be renewed for a period of six months from the date of today, this being the date of renewal, and without any further requirement as to actual service within that period.

I may add that if a further application to renew is made before the expiration of this extended period and no effort

has been made to effect service in that time, that may well be a consideration which would be material to any decision whether or not the writ should be further extended.

The question of service of the notice of the writ outside the Commonwealth brings into consideration the provisions of O. 10 of the High Court Rules. Leave to serve a writ of summons or notice of a writ of summons outside the Commonwealth may be given by a Justice in a variety of situations, including those mentioned in par. (e) of r. 1 of the Order, where the action is one brought inter alia in respect of the breach of a contract made within the Commonwealth, or which is governed by the law of the Commonwealth or of a State or Territory.

One or other, or perhaps both of those categories would seem clearly to be applicable to the case of the second defendant in the action and therefore, it is open consistently with the rule to grant leave in respect of that defendant.

The claim against the third defendant does not lie in contract but in tort, and the question is whether par. (g) or par. (i) supports the motion with respect to the third defendant. Paragraph (g) refers to an action being founded on a tort committed within the Commonwealth. I find that ground rather elusive, and my understanding of the facts on which the action is founded is not such as to give me any confidence in concluding that the action is founded on a tort committed within the Commonwealth.

But par. (i) refers to service on a person outside the Commonwealth where that person is a necessary or proper party to an action properly brought against some other person duly served within the Commonwealth. In my opinion, the relationship between the defendants is such as to make the third defendant a proper party to the action and, of course, the first defendant is a person who is to be duly served within the Commonwealth.

I find, therefore, that there is power in the Court to grant the motion and I have no hesitation in concluding that it ought to be granted in terms of pars 2 and 3 of the motion. Paragraph 2 of the motion has been amended simply

in a textual way to include the words "notice of" at the end of the first line of the motion, so that it reads, "leave be granted to the first and second plaintiffs to serve notice of the writ of summons" et cetera. And I would also add to both cl. 2 and 3 of the motion, the further order in each clause that the defendant - that is to say the third defendant in the second clause of the motion, and the second defendant in the third clause of the motion - have 45 days from the date of service for entering an appearance. Furthermore, I would add in the case of the second and third paragraphs of the order that service be effected by service at the registered office of the company. Counsel has also requested that certain procedural clauses be added to the order, namely that the costs of and incidental to the motion be costs in the cause and has sought a certificate that this was a matter proper for attendance of counsel. I am prepared to make those orders.

There will be orders in the terms that I have indicated.

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INC. AND EVOLUTION MARITIME &
ENTERPRISES LIMITED

REASONS FOR JUDGMENT

Judgment delivered at Canberra (In Chambers)

on the 9th day of May 1984

Wilson J. (Oral)
