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Leave to interrogate: when will it be granted?

In Queensland, with the advent of the *Uniform Civil Procedure Rules* ('the UCPR'), the former Supreme Court Rules relating to interrogatories were adopted. Following the decision in *Ranger v Suncorp General Insurance Ltd*[1], which was delivered on 14 August 1998, there has been a widely held view that interrogatories have, for all intents and purposes, become extinct in Queensland. More recent decisions would tend to suggest that this is incorrect and that interrogatories are not simply a relic from a bygone era but are still readily available to be used in appropriate cases.

The Rules

Interrogatories may be delivered, with the court's leave, to a party to a proceeding (including a third party) or to a non-party (to determine whether that person should be included as an appropriate party to the proceeding).[2] The number of interrogatories which may be delivered are limited to 30 unless the court directs otherwise.[3]

However, pursuant to Rule 230(1)(b) UCPR, a court may give leave to deliver interrogatories:

'Only if the court is satisfied there is not likely to be available to the applicant at the trial another reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory.'

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Ranger v Suncorp: The Decision

The action was a claim for personal injuries arising from a collision which was said to have occurred at a service station. The defendant wished to interrogate in detail about the circumstances of the collision. It was suggested that the defendant had some lack of recollection of certain aspects of the incident.

The matter initially came before Cullinane J who refused the defendants leave to interrogate. In dismissing the appeal, Pincus JA[4] made the following comments:

'... the case is simply one in which one party in a motor accident case wishes to interrogate about the details of the opposing party's version of the facts... The expectation, plainly, is that other than in quite special circumstances interrogatories will only be allowed if the conditions set out in subr (1)(b) applies; here it does not. The matters sought to be elicited by interrogatories can be ascertained at trial by the simple means of listening to the evidence of the respondent and cross-examining upon it.'

In essence, the court found that the plaintiff's evidence-in-chief and subsequent cross-examination was another reasonably simple and inexpensive way of proving the matter which was sought to be elicited by the interrogatories.

This decision has been used as being supportive of the view that leave should not be given to interrogate other than in exceptional circumstances, as parties can necessarily listen to the evidence-in-chief and then cross-examine upon it in almost all cases.

Subsequent Decisions

Two recent Supreme Court decisions have cast doubt upon such an extreme view.

In *Cross v Queensland Rugby Football Union Limited and Pegg*[5] Chesterman J granted leave to the plaintiff to deliver interrogatories. In this accident the plaintiff suffered debilitating injuries during the course of a game of rugby. As a result of his injuries, he had no recollection of the event which had transpired during a maul.

The plaintiff's interrogatories were designed to elicit the facts and circumstances leading to the injury and the circumstances in which the match had been arranged and instructions given by the defendants. In distinguishing the case of *Ranger*, Chesterman J made the following observations:

'... I cannot believe that the amendments made to O 35 rr 19-21 of the *Supreme Court Rules*, repeated as UCPR 228-230 were meant to frustrate or obstruct a plaintiff's prosecution of a case such as this ...It has always been a proper use of interrogatories to elicit information from a party who has knowledge of facts relevant to the facts in issue in the cause of action where the interrogator does not possess that information. This is essentially what is sought by the draft interrogatories.'

His Honour noted that it was the plaintiff in this matter (as opposed to the defendant in *Ranger*) who wished to interrogate. This had the important consequence that if the plaintiff did not obtain the information necessary to advance his case then there was no need for the defendants to go into evidence and the plaintiff would be deprived of any opportunity to cross-examine them.

Ranger was again distinguished in the matter of *Gregory Stewart Pty Ltd v Domira Pty Ltd*[6]. In this action the plain-

tiff suffered injuries when he fell from a balcony. He commenced an action against the owner and occupiers of the premises (the defendants). The defendants issued third party proceedings against the managing agents. The third parties sought leave to interrogate the defendants to elicit information concerning the knowledge the defendants had of the condition of the balcony before and after the fall, whether any repair works were undertaken, details of conversations concerning the state of the balcony, etc.

In granting the third parties leave to interrogate Justice Mackenzie J noted:

'... there are inherent difficulties faced by a third party in effectively conducting the case where there are facts peculiarly within the knowledge of the party which has joined them. In a sense there is no reasonably simple way of proving the facts especially insofar as they may need to be used as a basis for the third party's case when the plaintiff is giving evidence on the assumption that the third party proceedings are heard contemporaneously with the primary proceedings.'

Future Development

The procedure of interrogation is still alive and well. It seems the courts are happy to grant leave to interrogate in circumstances where the interrogating party is simply not in a position to obtain the information sought in any other way.

In motor accident[7] and work-related[8] claims there are other methods available to obtain the opposing party's version of events and other relevant information (through claim forms, statements, statutory declarations etc). It is difficult to envisage a situation which could arise where a court would grant leave in such cases.

However, in public liability, product liability and medical negligence claims, circumstances can often arise where one party simply does not have any other means of obtaining the information necessary to advance their case. This is likely to be so in cases where, for example, systems of inspection, warnings, internal procedures, warnings given, knowledge of previous problems, etc. are in issue and there is no real documentary evidence to assist. PL

Footnotes:

1. [1999] 2 QdR 433
2. Rule 229(1) UCPR
3. Rule 229(2) UCPR
4. with whom Thomas JA and Mackenzie J agreed
5. [2001] QSC 173
6. Unreported, Supreme Court, 6 April 2000
7. through the provisions of the Motor Accident Insurance Act 1994 (as amended)
8. through the provisions of the Workcover Queensland Act 1996 (as amended)

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