

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 accident⁷ and work-related⁸ 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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