

AUSTRALIA / JUDGMENT

Bexson Pty Ltd v Staneton Pty Ltd [1987] FCA 634

COURT

- no specific provision in Federal Court Rules -
Court's implied

Source: judgments.fedcourt.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Source record

~

.

JUDGMENT No. 624-61.

CATCHWORDS

PRACTICE AND PROCEDURE ~- Brisbane solicitors engaged Perth agents to act for respondent ~ address for service given as agent's address - agents unable to contact principals for further instructions- application by agents to be "withdrawn from record" - no specific provision in Federal Court Rules - Court's implied incidental power to order that address of agent shall no longer be address for service of party - considerations to be taken into account in exercise of power.

Federal Court Rules 0.7 r.6, 0.9 r.4, 0.45 r.4

BEXSON PTY LTD v STANETON PTY LTD

NO. WAG 69 of 1986

FRENCH J. -

PERTH

19 AUGUST 1987

IN THE FEDERAL COURT

OF AUSTRALIA

WESTERN AUSTRALIA

DISTRICT REGISTRY

NO. WAG 69 of 1986

BETWEEN: BEXSON PTY LTD

Applicant

and

STANETON PTY LTD

Respondent

MINUTE OF ORDER

JUDGE MAKING ORDER: FRENCH J.

DATE OF ORDER: 19 AUGUST 1987

WHERE MADE: PERTH

THE COURT ORDERS
THAT:

The Perth agents of the solicitors for the respondent have leave from 4pm on 24 August 1987 to refuse to accept service of any further document in these proceedings.

The address for service of the respondent as from 4pm on 24 August 1987 shall no longer be the office of Messrs. Corser & Corser.

The respondent do on or before 25 August 1987 file a notice showing a new address for service and deliver a copy to the solicitors for the applicant.

2.

The agent solicitors do forthwith deliver by the fastest practical method a copy of this order to the solicitors for the respondent in Brisbane and to the solicitors for the applicant.

Costs on this motion are reserved.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT

OF AUSTRALIA

WESTERN AUSTRALIA

DISTRICT REGISTRY

we ww

NO. WAG 69 of 1986

BETWEEN: BEXSON PTY LTD

Applicant

and

STANETON PTY LTD

Respondent

CORAM: FRENCH J.

19 AUGUST 1987

REASONS FOR JUDGMENT

In this application, which was instituted on 10 July 1986, the applicant, a West Australian company, claims damages against the respondent, a Queensland company, for contravention of s.52 of the Trade Practices Act.

The contravention is said to have arisen out of representations made by the respondent prior to entering into a distributorship agreement with the applicant in relation to the sale in Queensland of an automotive device known as the Pacemaker

Safety Power Switch.

An appearance was filed on 28 July 1986, designating a Brisbane firm as solicitors for the respondent.

The address for service was shown as that of the offices of a Perth firm of solicitors, Messrs. Corser & Corser.

2.

The appearance was signed by:-

"Corser & Corser, Solicitors acting as agents for- Michael Quinn & Co., Solicitors for the Respondent."

Most of the documents' subsequently filed in the proceedings on behalf of the respondent have been endorsed "Corser

& Corser, Solicitors acting as agents for Michael Quinn & Co."

The affidavit of discovery however, bears the name "Messrs. Michael Quinn & Company" on the backing sheet. The certificate at the foot of the affidavit appears to be signed by

that firm and the place for inspection of documents is shown as

its office in Brisbane.

On 17 July 1987 the Deputy District Registrar set the

application down for hearing over 3 days commencing 26 August 1987.

By a motion filed 13 August and returnable on 18 August,

the Perth agents for the respondent seek orders in the following

terms :-

"1. Corser & Corser have leave to withdraw their name from the record as Solicitors acting as agents for Michael Quinn & Co., Solicitors for the Respondent; and

2. The costs of and incidental to this application be

taxed and paid by Messrs. Michael Quinn & Co. in any event. "

3.

The motion was supported by an affidavit which showed that the Perth agents were instructed in July 1986 by their

Brisbane principals.

Various interlocutory steps were carried out on the

instructions of the Brisbane firm.

However, since 19 May 1987 there seems to have been a complete break-down in communications. According to the affidavit, all attempts to contact the Brisbane firm by telephone and letter to obtain instructions, including instructions to brief

counsel for the trial, have been to no avail.

On 6 August the Perth agents wrote to their Brisbane principals indicating that they regarded the agency agreement as at an end and giving notice of their intention to apply to the

Court to have their name "removed from the Court record".

Under the provisions of 0.7 r.6(2), the address for service of a person represented by a solicitor shall be the office

of the solicitor or his agents.

Order 7 r.6(1) imposes the limitation that an address for service shall be the address of a place within 10 kilometres

of the registry.

The requirements for a notice of appearance are set out

in 0.9 r.4 and include a requirement that :-

0.45.

4.

"(1) A notice of appearance shall show -

(c) where the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent for him in the

proceeding, the name, address and telephone number of the agent; and

(d) an address for service."

Changes of solicitor are regulated by the provisions of

Order 45 r.4 provides for change of agent:-

"Where a solicitor (in this rule called the principal solicitor) acts for a party in any proceeding and another solicitor acts as agent for the principal solicitor in the proceeding and the principal solicitor changes the solicitor acting as agent, the party shall file notice of the change and serve the notice on the other parties and on the former agent solicitor."

This rule is silent, however, on the case where an agent

solicitor wishes to terminate his agency.

The Court has a concern in such a case, which I think is two-fold. The first element of its concern relates to the necessity to maintain an address for service for the party affected.

If the agency is terminated, then it is the obligation of the party concerned to ensure that a new address for service is found which complies with the requirements of the rules.

20 yee wre we me

opps

Lat

wna 0 OM Ribbed Sea.

prewper ts Cin ty Ome ees

MaDe et

5.

The Court in such a case should ensure that' the principal solicitor has sufficient notice of the termination to

enable him to take steps to arrange a new address for service.

The second element of the Court's concern arises when the agent appears in substance to have the conduct of the case for

the party it represents.

In such a case the Court may wish to ensure that the principal solicitor has notice of the termination sufficient to enable him to discharge his responsibility of arranging continuing representation for his client.

The agent in this case comes to Court seeking leave to

withdraw its name from the record.

In substance, I regard the motion as a motion to determine the use of the agent's address as the address for

service of the respondent.

In my opinion, the Court, as part of the power it has to regulate its own proceedings, has an implied incidental power to order that the address of an agent solicitor shall no longer be the address for service of the party concerned and to attach conditions to or make further directions consequential upon such

an order.

6.

In the circumstances of this case I am satisfied that the agents have taken all reasonable steps to communicate with and seek instructions from the principal solicitors, and that the

circumstances left them with very little choice but to terminate

the agency arrangement.

Having regard to the concerns of the Court to which I

have already adverted, I propose to make the following orders:-

1. The Perth agents of the solicitors for _ the respondent have leave from 4pm on 24 August 1987 to

refuse to accept service of any further document in these proceedings.

2. The address for service of the respondent as from 4pm on 24 August 1987 shall no longer be the office of Messrs. Corser & Corser.

3. The respondent do on or before 25 August 1987 file a notice showing a new address for service and deliver a copy to the solicitors for the applicant.

4. The agent solicitors do forthwith deliver by the fastest practical method a copy of this order to

the solicitors for the respondent in Brisbane and to the solicitors for the applicant.

5. Costs on this motion are reserved.

I certify that this and the preceding

five (5) pages are a true copy of the Reasons for Judgment of his Honour Justice French.

Associate: UP

7.

No appearance for the Applicant.

Counsel for the Respondent: Mr R. McCormack Solicitors for the Respondent: Michael Quinn & Co.

Date of Hearing: 18 August 1987 Date of Judgement: 19 August 1987

JUDGMENT No. 2.6

CATCHWORDS

PRACTICE AND PROCEDURE - Brisbane solicitors engaged Perth agents

to act for respondent - address for service given as agent's address - agents unable to contact principals for further instructions- application by agents to be "withdrawn from record"

- no specific provision in Federal Court Rules - Court's implied incidental power to order that address of agent shall no longer be address for service of party - considerations to be taken into

account in exercise of power.

Federal Court Rules 0.7 r.6, 0.9 r.4, 0.45 r.4

BEXSON PTY LTD v STANETON PTY LTD

NO. WAG 69 of 1986

FRENCH J. .

PERTH Ly . SO _- "-\

19 AUGUST 1987 len ; a CANT

IN THE FEDERAL COURT OF AUSTRALIA WESTERN AUSTRALIA DISTRICT REGISTRY

eee ee we

NO. WAG 69 of 1986

BETWEEN: BEXSON PTY LTD

Applicant

and STANETON PTY LTD

Respondent

MINUTE OF ORDER

JUDGE MAKING ORDER: FRENCH J.

DATE OF ORDER: 19 AUGUST 1987

WHERE MADE: PERTH

THE COURT ORDERS THAT:

The Perth agents of the solicitors for the respondent have leave from 4pm on 24 August 1987 to refuse to accept service of any further document in these proceedings.

The address for service of the respondent as from 4pm on 24 August 1987 shall no longer be the office of Messrs. Corser & Corser.

The respondent do on or before 25 August 1987 file a notice showing a new address for service and deliver a

copy to the solicitors for the applicant.

2.

The agent solicitors do forthwith deliver by the fastest practical method a copy of this order to the solicitors

for the respondent in Brisbane and to the solicitors for the applicant.

Costs on this motion are reserved.

Note: Settlement and entry of orders is dealt with in

Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA WESTERN AUSTRALIA DISTRICT REGISTRY

www ww

NO. WAG 69 of 1986

BETWEEN: BEXSON PTY LTD Applicant

and

STANETON PTY LTD Respondent

CORAM: FRENCH J. 19 AUGUST 1987

REASONS FOR JUDGMENT

In this application, which was instituted on 10 July 1986, the applicant, a West Australian company, claims damages against the respondent, a Queensland company, for contravention of s.52 of the Trade Practices Act.

The contravention is said to have arisen out of representations made by the respondent prior to entering into a distributorship agreement with the applicant in relation to the

sale in Queensland of an automotive device known as the Pacemaker

Safety Power Switch.

An appearance was filed on 28 July 1986, designating

a Brisbane firm as solicitors for the respondent.

The address for service was shown as that of the offices of a Perth firm of solicitors, Messrs. Corser & Corser.

2.

The appearance was signed by:-

"Corser & Corser, Solicitors acting as agents for.. Michael Quinn & Co., Solicitors for the Respondent."

Most of the documents subsequently filed in the proceedings on behalf of the respondent have been endorsed "Corser

& Corser, Solicitors acting as agents for Michael Quinn & Co."

The affidavit of discovery however, bears the name "Messrs. Michael Quinn & Company" on the backing sheet. The certificate at the foot of the affidavit appears to be signed by

that firm and the place for inspection of documents is shown as

its office in Brisbane.

On 17 July 1987 the Deputy District Registrar set the application down for hearing over 3 days commencing 26 August

1987.

By a motion filed 13 August and returnable on 18 August,

the Perth agents for the respondent seek orders in the following

terms :-

"1. Corser & Corser have leave to withdraw their name from the record as Solicitors acting as agents for

Michael Quinn & Con, Solicitors for the Respondent; and

2. The costs of and incidental to this application be

taxed and paid by Messrs. Michael Quinn & Co. in any event. "

3.

The motion was supported by an affidavit which showed that the Perth agents were instructed in July 1986 by their

Brisbane principals.

Various interlocutory steps were carried out on the

instructions of the Brisbane firm.

However, since 19 May 1987 there seems to have been a complete break-down in communications. According to the affidavit, all attempts to contact the Brisbane firm by telephone and letter to obtain instructions, including instructions to brief

counsel for the trial, have been to no avail.

On 6 August the Perth agents wrote to their Brisbane principals indicating that they regarded the agency agreement as at an end and giving notice of their intention to apply to the

Court to have their name "removed from the Court record".

Under the provisions of 0.7 r.6(2), the address for service of a person represented by a solicitor shall be the office

of the solicitor or his agents.

Order 7 r.6(1) imposes the limitation that an address for service shall be the address of a place within 10 kilometres

of the registry.

The requirements for a notice of appearance are set out

in 0.9 r.4 and include a requirement that :-

4.

"(1) A notice of appearance shall show -

- (c) where the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent for him in the proceeding, the name, address and telephone number of the agent; and
- (d) an address for service."

Changes of solicitor are regulated by the provisions of

0.45. Order 45 r.4 provides for change of agent:-

"Where a solicitor (in this rule called the principal solicitor) acts for a party in any proceeding and another solicitor acts as agent for the _ principal solicitor in the proceeding and the principal solicitor changes the solicitor acting as agent, the party shall file notice of the change and serve the notice on the other parties and on the former agent solicitor."

This rule is silent, however, on the case where an agent solicitor wishes to terminate his agency.

The Court has a concern in such a case, which I think is two-fold. The first element of its concern relates to the

necessity to maintain an address for service for the party

affected. .

If the agency is terminated, then it is the obligation of the party concerned to ensure that a new address for service is

found which complies with the requirements of the rules.

we

5.

The Court in such a case should ensure that' the principal solicitor has sufficient notice of the termination to

enable him to take steps to arrange a new address for service.

The second element of the Court's concern arises when

the agent appears in substance to have the conduct of the case for

the party it represents.

In such a case the Court may wish to ensure that the principal solicitor has notice of the termination sufficient to enable him to discharge his responsibility of arranging continuing

representation for his client.

The agent in this case comes to Court seeking leave to

withdraw its name from the record.

In substance, I regard the motion as a motion to determine the use of the agent's address as the address for

service of the respondent.

In my opinion, the Court, as part of the power it has to regulate its own proceedings, has an implied incidental power to order that the address of an agent solicitor shall no longer be the address for service of the party concerned and to attach

conditions to or make further directions consequential upon such

an order.

6.

In the circumstances of this case I am satisfied that the agents have taken all reasonable steps to communicate with and seek instructions from the principal solicitors, and that the circumstances left them with very little choice but to terminate

the agency arrangement.

Having regard to the concerns of the Court to which I

have already adverted, I propose to make the following orders:-

1. The Perth agents of the solicitors for the respondent have leave from 4pm on 24 August 1987 to

refuse to accept service of any further document in these proceedings.

2. The address for service of the respondent as from 4pm on 24 August 1987 shall no longer be the office of Messrs. Corser & Corser.
3. The respondent do on or before 25 August 1987 file a notice showing a new address for service and deliver a copy to the solicitors for the applicant.
4. The agent solicitors do forthwith deliver by the fastest practical method a copy of this order to the solicitors for the respondent in Brisbane and to the solicitors for the applicant.

5e Costs on this motion are reserved.

I certify that this and the preceding five (5) pages are a true copy of the Reasons for Judgment of his Honour Justice French.

Associate: aera SEAS Date: , ; t 196)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/1987/1987FCA0634.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/australia/bexson-pty-ltd-v-staneton-pty-ltd-1987-fca-634-1987>

Prepared on 29 October 2026 · Esheria