Browning v ANZ [2014] QCA 43

10 March 2014

Subjects: Default judgment, Farm Debts Mediation Act, Pleadings

The lender sought judgement for:

1. $6.8 million
2. Two cattle stations
3. Specified livestock

This was granted in default of a defence being filed by a Registrar. However being a mixed judgement only a Judge had the power to enter default judgement (not the Registrar).

It has been long accepted that a defendant is entitled to have an irregularly entered judgment set aside as of right, subject to it not being futile to interfere with the judgment.

Here the appeal court found that it would not have been futile because the registrar should not have entered default judgement even if he had the power. This was because the statement of claim was a sketchy and rather unsatisfactory document.

1. There was no direct allegation in the statement of claim that the principal was actually advanced.
2. The material terms of the loan agreement were not pleaded or identified
3. There was no direct allegation in the statement of claim that the principal were due and owing.
4. It alleged that the lender wrote to the borrowers seeking to mediate "the debt owed in accordance with the Queensland Farm Debt Mediation Scheme" and that the borrowers refused to mediate in accordance with such scheme but did not specify how those matters were relevant.
5. APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – IN GENERAL – FAILURE TO EXERCISE DISCRETION – where the appellants entered into two loan agreements with the respondent – where the respondent alleged in a statement of claim that a "Default Event" occurred in that the term of both loan facilities expired and the appellants failed to make repayments – where the respondent claimed $6,879,097.40 in payment of a debt alleged to be owing by the appellants to the respondents, recovery of possession of two parcels of land, recovery of possession of livestock, interest and costs – where the respondent filed a request for default judgment – where default judgment given by a deputy registrar ordered that the respondent recover possession of the subject land and livestock and that the appellants pay the respondent $7,036,157.66, including interest and costs – where the appellants' application to have the default judgment set aside was refused – where the appellants' application for an order staying proceedings on an enforcement order pending appeal was refused – where the default judgment bore the notation "Form 26 Rule 283" – where the primary judge concluded that the judgment should have been made under r 287 of the Uniform Civil Procedure Rules 1999 (Qld) (the UCPR) – where the appellants submit that the default judgment was irregular – whether the exercise by the primary judge of his discretion miscarried as he failed to have regard to the non-compliance with r 283 to r 288 of the UCPR – whether the primary judge should have set aside the default judgement
6. **Summary Notes**

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7. General Civil Appeal – Loans – where the appellants entered into two loan agreements with the respondent – where the respondent alleged in a statement of claim that a "Default Event" occurred in that the term of both loan facilities expired and the appellants failed to make repayments – where the respondent claimed $6,879,097.40 in payment of a debt alleged to be owing by the appellants to the respondent, recovery of possession of two parcels of land, recovery of possession of livestock, interest and costs – where the respondent filed a request for default judgment – where default judgment given by a deputy registrar ordered that the respondent recover possession of the subject land and livestock and that the appellants pay the respondent $7,036,157.66, including interest and costs – where the appellants' application to have the default judgment set aside was refused – where the appellants' application for an order staying proceedings on an enforcement order pending appeal was refused – where the default judgment bore the notation "Form 26 Rule 283" – where the primary judge concluded that the judgment should have been made under r 287 of the Uniform Civil Procedure Rules 1999 (Qld) (the UCPR) – where the appellants submit that the default judgment was irregular – whether the exercise by the primary judge of his discretion miscarried as he failed to have regard to the non-compliance with r 283 to r 288 of the UCPR – whether the primary judge should have set aside the default judgement – where the respondent sought to rely on r 287 UCPR, arguing that the respondent's claims for relief included two or more of the claims for relief mentioned in rr 283 to 286 – where the respondent's difficulty is that its claim for relief contains an additional claim, the claim for recovery of possession of the livestock – where under r 290 of the UCPR, a "court may set aside or amend a judgment by default" on such terms as it considers appropriate – where the entering of judgments pursuant to rules such as those in Division 2 of Part 1 of Chapter 9 of the UCPR is a very serious matter that has obvious impact on the rights of a defendant – where the interests of justice favour the setting aside of the irregularly entered judgment – where the statement of claim served on the appellants is a sketchy and rather unsatisfactory document – where there are matters in the statement of claim that are likely to give rise to confusion – where the transactions the subject of the litigation have a degree of complexity – where having regard to the pleading and the material placed before the deputy registrar, the deputy registrar would not have been in a position to determine precisely what judgment should have been given even if the deputy registrar had power to embark on such a determination. Appeal allowed. Orders of primary judge set aside with costs.