

Queensland v JL Holdings Pty Ltd (1997) 189 CLR 146

Practice Area

Pleadings - Case management practices - Whether leave to add arguable defence may be refused on case management grounds - Compensation by costs

Headline

Parties not prevented from adding new defences provided prejudice to other parties could be covered by costs.

Date

20/6/16

Brief Summary

JL Holdings was a decision that framed the modern day 'overriding purpose' doctrine. The decision provides insight into the priorities of case management prior to the introduction of s 56 of the *Civil Procedure Act 2005* (NSW). *JL Holdings* was finally overruled in *AON Risk Service v Australian National University* (2009) 239 CLR 175.

Facts

The parties were engaged in a long running commercial dispute concerning a lease to develop certain land. The estimated length of the trial was four months. After a number of interlocutory hearings and several amendments to the defence, the defendants applied again to amend their defence. All but one of the amendments were allowed. Keifel J in the FCA refused leave to add a defence which, though arguable, was likely to result in the vacation of the date which had been fixed for the trial six months ahead. The judge considered that maintaining that date was a more pressing consideration than a party's right to present a further defence.

Issues

Whether a party could amend their defence, which, although it was arguable, would likely result in the vacation of the trial date.

Decision

Dawson, Gaudron and McHugh JJ

The judges first looked at past decisions of the court, namely *Sali v SPC Ltd* and *Cropper v Smith*. They concluded that no principle arose in these cases to shut out a party from arguing a fairly arguable issue. Rather, if an amendment sought raises a new defence, and the defence is arguable, then they should be permitted to argue it provided that any prejudice to the other party can be compensated by costs.

Lesson

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