Split

Supreme Court of New South Wales

De Armas v Peters [2015] NSWSC 1050 (29 July 2015)

Last Updated: 29 July 2015

	Supreme Court New South Wales
Case Name:	De Armas v Peters
Medium Neutral Citation:	[2015] NSWSC 1050
Hearing Date(s):	3 February 2015
Date of Orders:	28 July 2015
Decision Date:	29 July 2015
Jurisdiction:	Common Law
Before:	Wilson J
Decision:	Leave to Appeal Refused; Summons dismissed; Leave to Cross Appeal Refused; Cross Summons dismissed
Catchwords:	APPEAL – appeal from Local Court to Supreme Court – motor vehicle accident – leave to appeal from Local Court - res judicata – subrogated rights of insurer – s24 Civil Procedure Act
Legislation Cited:	Civil Procedure Act 2005 Local Court Act 2007 Uniform Civil Procedure Rules
Cases Cited:	Australian Associated Motor Insurers Ltd v NRMA Insurance[2002] FCA 1061 Be Financial Pty Ltd v Das [2012] NSWCA 164 Blair v Curran [1939] HCA 23; (1939) 62 CLR 464 Gleeson v J Wippell & Co Ltd [1977] 1 WLR 510 Insurance Commission of Western Australia v Kightly [2005] WASCA 154 Linsley v Petrie [1998] 1 VR 427 Ramsay v Pigram [1968] HCA 34; (1968) 118 CLR 271 Sydney Turf Club v Crowley [1971] NSWLR 724
Texts Cited:	Leigh-Jones & Ors, MacGillivray on Insurance Law (11th ed, 2008, Sweet & Maxwell) Spencer & Ors, Res Judicata (3rd ed,1996, Handley, Butterworths)
Category:	Procedural and other rulings
Parties:	Carmen De Armas (Plaintiff)

	Gifford Peters (Defendant)
Representation:	Counsel: P Bambagiotti (Plaintiff) S Emmett (Defendant) Solicitors: Mills Oakley (Plaintiff) Holman Webb Lawyers (Defendant)
File Number(s):	2014/190733
Decision under appeal:	
Court or Tribunal:	Local Court
Date of Decision:	16 April 2014
Before:	Millege LCM
File Number(s):	2014/190733

JUDGMENT

1. **HER HONOUR:** The plaintiff in these proceedings is Carmen de Armas. In a summons filed in the Registry of this Court on 27 June 2014, Ms de Armas seeks leave to appeal a decision of Millege LCM of 16 April 2014. The defendant, Gifford Peters, filed a cross-summons seeking leave to cross appeal on 18 August 2014.
2. To avoid confusion the plaintiff (and cross defendant) will simply be referred to by name, as will Mr. Peters, the defendant (and cross-plaintiff).
3. The dispute between the parties arose from a motor vehicle collision that occurred on 12 July 2012. Ms. de Armas owned one of the vehicles involved in the collision, and was driving the car at the material time, whilst Mr. Peters owned the second vehicle, it being then driven by his wife, Charlotte Peters. The motor vehicles of both owners were insured, Mr. Peters' vehicle with NRMA Insurance ("NRMA"), and that of Ms. de Armas with AAMI Insurance ("AAMI").
4. After the crash and when his own car was off the road for repairs, Mr. Peters hired a car for his use. He incurred fees for the hire of the vehicle over and above hire car costs covered by his motor vehicle insurance policy.

Local Court proceedings

5. On 5 September 2012, Charlotte Peters brought proceedings against Ms de Armas in the Small Claims Division of the Local Court, claiming that the collision and resultant damage to her husband's car was caused by the negligence of Ms. de Armas. She sought damages measured by the rental cost of the hire car. At a later stage, Mr Peters was substituted as the plaintiff, in lieu of his wife.

6. Neither Mr. Peters nor his wife notified their insurer, the NRMA, of the Local Court proceedings, and the NRMA had no knowledge of or involvement in the action.

7. Ms De Armas denied the negligence asserted by Mr. Peters and brought a cross-claim against Mr. Peters, alleging negligence by Mrs. Peters and consequent damage to her car. She sought an order for payment by Mr. Peters of the value of the damage to her vehicle and all associated loss.

8. On 3 October 2012 there was a telephone conversation between an officer of the NRMA and an officer of AAMI about the damage occasioned to the respective insured's cars, but the AAMI representative did not refer to the litigation between the clients of the two companies, despite having knowledge of it. The NRMA remained ignorant of the initial proceedings.

9. On 15 November 2012, Mr Peters brought a second set of proceedings against Ms. de Armas in the Local Court, relying on the same allegations as those relied upon in the earlier action, although making a greater claim in damages, the damages sought including the costs of repair, towing charges and hire car costs. These proceedings were brought in his name by Mr. Peters' insurer, the NRMA, pursuant to an alleged right of subrogation.

10. On 16 December 2012, Ms de Armas filed a defence in the second proceedings. She did not plead reliance upon any abuse of process by Mr. Peters.

11. On 13 February 2013 the Small Claims Division of the Local Court made the following orders in relation to the first proceedings:

"1. Verdict for the defendant/cross-claimant [de Armas]
2. Leave to amend the plaintiff's name to Gifford Dwight Peters
3. Judgment for Peters to pay de Armas the sum of $4,174.01 being an amount for the cross-claim and court costs, professional costs and interest."

12. Two days later, on 15 February 2013, the NRMA received notice of the first set of proceedings through a phone call made by Mrs Peters to the insurer.

Two notices of motion

13. On 27 February 2013, Ms de Armas filed a notice of motion seeking orders to dismiss the second set of proceedings as being inconsistent with the orders of the Local Court of 13 February 2013, on the basis of *res judicata,* the operation of s 24 of the *Civil Procedure Act* 2005 ("the Act") and generally to prevent an abuse of process. On 5 March 2013, Ms. de Armas filed an amended defence to the second proceedings raising the issues of *res judicata* and s 24 defences.

14. On 23 April 2013, Mr. Peters filed a notice of motion in the second proceedings seeking that the orders of 13 February 2013 be set aside

pursuant to r 36.16 Uniform Civil Procedure Rules 2005 as being entered 'irregularly or against good faith.'

Local Court proceedings

15. The two motions were heard by Magistrate Milledge on 16 April 2014.

16. Her Honour firstly considered the two proceedings and whether they are merged in law. She found that both the first and second set of proceedings were in respect of the same cause of action but by 'two distinctly different entities' as the NRMA brought the second proceedings pursuant to its rights of subrogation. She found that the NRMA had a right to be heard in both matters but that opportunity had been denied to it, as Mr and Mrs Peters did not notify it of the first set of proceedings, and nor did AAMI advise the NRMA of the proceedings.

17. The Court found that, as the two proceedings were brought by two different entities, Ms de Armas' notice of motion raising issues of *res judicata* and the s 24 provisions of the Act could not be granted.

18. The Court also found that the NRMA had a right to sue Ms de Armas in the name of Mr. Peters. On that basis her Honour concluded that the proceedings were not an abuse of process.

19. As her Honour had made this finding, she regarded it as unnecessary to consider the motion filed by Mr. Peters regarding an abuse of process under r 36.15. It was dismissed.

20. **Supreme Court Proceedings**

21. This matter was heard before me on 3 February 2015. The appellant's summons pleaded the following proposed grounds of appeal:

"1. The learned magistrate erred in law in failing to hold that, by reason of the prior judgment that had been given and entered in Local Court proceedings 2012/00278186 ("the prior proceedings"), the plaintiff (defendant in the proceedings below; hereinafter "De Armas") was entitled to judgment in the proceedings below pursuant to s24 of the *Civil Procedure Act 2005*.

2. Further, or alternatively, the learned magistrate erred in law in failing to hold that, by reason of the verdict and judgment that had been given and entered up for De Armas in the prior proceedings:

a.Res judicata estoppel was a complete defence to the proceedings below; and or

b. The proceedings below were an abuse of process

3. The learned magistrate erred in law in holding that the insurer ("NRMA") of the defendant (plaintiff in the proceedings below: hereinafter "Peters") had "a right in the first instance to bring a claim against [De Armas] ... in its own right looking at the interests of the insured and the interests of the insurer, (see judgment transcript at page 5.36 – 5.38). Any right of NRMA to institute or conduct the proceedings below, was confined to a right to institute or conduct those proceedings on the cause of action against De Armas to which, by reason of the verdict and judgment in the prior proceedings, s 24 of the *Civil Procedure Act* 2005 and or *res*

judicata estoppel constituted at all material times a complete defence, and the learned magistrate should have so held."

22. The cross-summons filed by Mr. Peters raised the following proposed grounds.

"1. If the learned magistrate erred on any of the grounds asserted by the Plaintiff's summons (which is denied) then the learned magistrate also erred by:
a. failing to consider the substance of the Defendant's motion filed 23 April; or in the alternative,
b. failing to hold that the 13 February 2013 Judgment was entered or made irregularly or against good faith on some or all of the grounds set out in the Defendant's Particulars of Bad Faith filed 23 May 2013.
c. consequently, failing to make the orders sought in the Defendant's motion filed 23 April 2013."

Leave

23. Before I deal with the grounds of appeal (which can be considered together), it is necessary to determine whether leave should be granted to Ms. de Armas to appeal this interlocutory judgment. The appeal is brought pursuant to s 40(2)(a) of the*Local Court Act* 2007, and the Court's leave is required. The same consideration applies to the cross-appeal filed by Mr. Peters.

24. Sections 39 and 40 of the *Local Court Act* 2007 provide:

"39 Appeals as of right

(1) A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court may appeal to the Supreme Court, but only on a question of law.
(2) A party to proceedings before the Court sitting in its Small Claims Division who is dissatisfied with a judgment or order of the Court may appeal to the District Court, but only on the ground of lack of jurisdiction or denial of procedural fairness.

40 Appeals requiring leave

(1) A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court on a ground that involves a question of mixed law and fact may appeal to the Supreme Court but only by leave of the Supreme Court.
(2) A party to proceedings before the Court sitting in its General Division who is dissatisfied with any of the following judgments or orders of the Court may appeal to the Supreme Court, but only by leave of the Supreme Court:

(a) an interlocutory judgment or order,
(b) a judgment or order made with the consent of the parties,
(c) an order as to costs."

25. In *Be Financial Pty Ltd v Das* [2012] NSWCA 164, Basten JA (with whom Tobias AJA agreed) set out at [32]–[36] the principles to be considered in deciding whether leave to appeal should be granted:

"The principles governing cases such as these have recently been restated in *Zelden v Sewell; Henamast Pty Ltd v Sewell* [2011] NSWCA 56. As Campbell JA noted (with the agreement of Young JA) at [22]:

It is of some importance to reiterate the principles that were stated in *Carolan v AMF Bowling Pty Ltd* [1995] NSWCA 69, where Sheller JA said that an applicant for leave must demonstrate something more than that the trial judge was arguably wrong in the conclusion arrived at. Cole JA relied on a principle that where small claims are involved, it is important that there be early finality in determination of litigation, otherwise the costs that will be involved are likely to swamp the money sum involved in the dispute.

In *Jaycar Pty Ltd v Lombardo* [2011] NSWCA 284 Campbell JA, with the agreement of Young and Meagher JJA, expanded on his summary of *Carolan*, noting that Kirby P had recognised "that ordinarily it was appropriate to grant leave to appeal only concerning matters that involve issues of principle, questions of general public importance or an injustice which is reasonably clear, in the sense of going beyond [what is] merely arguable: at [46].

...

In *Coulter v R* [1988] HCA 3 ; 164 CLR 350, dealing with a challenge to a refusal of the South Australian Full Court to grant leave to appeal in a criminal matter, the majority noted that a leave requirement was a preliminary procedure "recognised by the legislature as a means of enabling the court to control in some measure the volume of appellate work requiring its attention": at 356 (Mason CJ, Wilson and Brennan JJ). That statement is clearly applicable to civil, as well as criminal, appellate jurisdiction.

As the High Court has noted, an application for leave is not a proceeding in the ordinary course of litigation but a preliminary procedure: *Collins v R* [1975] HCA 60 ; 133 CLR 120 at 122; *Coulter* at 356. On the other hand, there is no reason to doubt that s 58 of the Civil Procedure Act 2005 (NSW), requiring a court to act in accordance with "the dictates of justice" when making an order or direction "for the management of proceedings", applies in respect of a leave application. One of the factors to be taken into account pursuant to s 58 is "the degree of injustice that would be suffered by the respective parties as a consequence of any order or direction": s 58(2)(b)(vi). That provision, like s 56, identifying the overriding purpose of the Civil Procedure Act as being to facilitate the just, quick and cheap resolution of the real issues in the dispute, recognises that questions of injustice are relative. Similarly, the requirement that this Court not order a new trial unless it appears that "some substantial wrong or miscarriage" has been occasioned, also reflects a principle of parsimony in requiring that the parties be put to the expense of a second trial: UCPR, r 51.53."

26. Ms de Armas submitted that leave should be granted because the issue of subrogation was an important one, of significance generally and

particularly to insurance companies. Mr Peters agreed that the issue was one of interest to insurers, but submitted (in oral submissions to the Court) that leave should be refused. If leave were granted to Ms De Armas, he submitted that leave had to be granted to him with respect to the cross-appeal, as a matter of procedural fairness.

27. That these proceedings originated in the Small Claims Division of the Local Court must be borne in mind. The quantum of damages relevant to the Local Court action was very low. The cost of these proceedings is likely to have already overtaken the sum originally in dispute, or at least come close to it. The principles of proceedings being dealt with justly, quickly, and cheaply are important ones.

28. As well as those considerations, the question of leave to appeal involves examination of the merits of the arguments advanced in support of the appeal and cross-appeal, and attention to whether any injustice has been occasioned to either party such that the intervention of this Court is required.

The Proposed Appeal and Cross Appeal

29. Ms. de Armas submits that the judgment of the Local Court should be set aside and the proceedings dismissed.

30. Mr. Peters submits that, if leave is granted to the plaintiff, it must similarly be granted to him to bring the cross-appeal, given that her Honour did not consider or determine on its merits the motion filed by him in the Local Court, as a consequence of the dismissal of the de Armas motion.

31. In the Local Court, the learned Magistrate concluded that each of the proceedings brought in the Local Court were brought by different entities, being Mr. Peters in his own right seeking damages to the amount of the cost of the hire car, and the NRMA as to damage and loss more broadly, in subrogation of the rights of Mr. Peters (J5:45 – 50).

32. The Court found that as the NRMA has a right to sue Ms. de Armas in the name of Mr. Peters, the proceedings filed second in time were not an abuse of process (J5:48) The issue of *res judicata* and the s.24 considerations were held not to have application.

33. Her Honour plainly gave significant weight to what she regarded as the injustice worked against the NRMA by the "negligence" of Mr. and Mrs. Peters in failing to inform the insurer that legal action had been launched against Ms. de Armas, compounded as it was by the inexplicable failure of AAMI to refer to the first proceedings during its dealings with the NRMA.

34. It would appear that her Honour concluded that the way in which both Mr. Peters and Ms. de Armas (and her insurer AAMI) had conducted themselves had significantly disadvantaged the NRMA and, as a consequence, the true issues had not been fully determined and ruled upon in the course of the determination of the first proceedings.

35. She concluded that, although it was a "line fall [*sic* - ball]" decision (J5:46), there was no *res judicata* issue, and nor did s.24 of the Act demand

that the motion filed by Ms. de Armas be granted. Her Honour considered that the positions and rights of the parties, and the justice of the matter, would be best served and protected by the matter being heard and determined with the involvement of the NRMA.

36. Ms. de Armas submitted in this Court, as she did in the Local Court, that both sets of proceedings brought in the Local Court were brought on the same cause of action, and included in the claim for damages some of the same particulars, that being the claim for the cost of the hire car to Mr. Peters. That being the case, the entity bringing the action was not determinative of the motion she moved before the Local Court, with the matter falling to be determined by reference to principles of *res judicata*, together with those matters set out in s.24 of the Act.

37. The doctrine of *res judicata* is defined in Spencer & Ors, *Res Judicata* (3rd ed,1996, Handley, Butterworths) as:

"... a decision pronounced by a judicial tribunal having jurisdiction over the cause and the parties which disposes once and for all of the matters decided, so that except on appeal they cannot afterwards be relitigated between the same parties or their privies".

38. In *Blair v Curran* [1939] HCA 23; (1939) 62 CLR 464, Dixon J described the doctrine in similar terms:

"A judicial determination directly involving an issue of fact or law disposes once and for all of the issue, so that it cannot afterwards be raised between the same parties or their privies."

39. Section 24(1) of the Act provides:

"24 Effect of splitting cause of action

(1) If:

(a) a person (the first person) splits any cause of action against another person (the other person) so as to commence proceedings, or make a cross-claim, for part only of the amount for which proceedings may be commenced on that cause, and

(b) judgment is given or entered, or a final order is made, on the proceedings or cross-claim,

the other person is entitled to judgment in any other proceedings, whether in that or any other court, with respect to the same cause of action."

40. Ms. de Armas contended, correctly, that a *res judicata* can arise from a decision or order of an inferior court: *Australian Associated Motor Insurers Ltd v NRMA Insurance* [2002] FCA 1061 per Conti J at [22].

41. Relying on both AAMI v NRMA, *ibid* at [74], she additionally submitted that a subrogating insurer is a privy to the insured.

42. The Court was referred to *Sydney Turf Club v Crowley* [1971] NSWLR 724 at 734, where Mason JA said that:

"Where an insurer is subrogated to the rights of the insured against a third party, the insurer does not acquire an independent cause of action in his own right. He succeeds to the insured's cause of action against the third party... That right of

action remains in all respects unaltered; it is brought in the name of the insured and is subject to all the defences which would be available if the action had been brought by the insured for his own benefit."

43. In relation to the doctrine of subrogation, reliance was also placed *Insurance Commission of Western Australia v Kightly* [2005] WASCA 154 where Steytler P said at [26]:

"...First, it gives to the insurer the right to require the insured to pursue any remedy available against the tortfeasor for the benefit of the insurer. Second, it gives to the insurer the right to recover from the insured any benefit received by the insured in diminution or extinction of the loss against which the insured has been indemnified. Brett LJ in *Castellain v Preston* (1883) 11 QBD 380 at 388 described the doctrine in the following way:

[A]s between the underwriter and the assured the underwriter is entitled to the advantage of every right of the assured, whether such right consists in contract, fulfilled or unfulfilled, or in remedy for tort capable of being insisted on or already insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable, which can be or has been exercised or has accrued, and whether such right could or could not be enforced by the insurer in the name of the assured by the exercise or acquiring of which right or condition the loss against which the assured is insured, can be, or has been diminished."

44. In *MacGillivray on Insurance Law* (11th ed, 2008, Sweet & Maxwell) in chapter 22, the learned authors discuss the character of subrogation as involving the two rights (at [22-002], p.61), in similar terms to Steytler P.

45. The conclusion Ms. de Armas contends for is:

"(a) the Earlier Proceedings give rise to a *res judicata* defence to the Proceedings Below;

(b) the Separate Entity finding would not prevent it;

(c) since the NRMA and Peters have, relevantly, an identity of interest in the context of the proceedings brought against de Armas, and since both sets of proceedings were brought in Peters' name, sec 24 of the CPA will apply to require judgment in de Armas' favour in the Proceedings Below, requiring them to be dismissed" (plaintiff's written submissions)."

46. As to the proposed cross-appeal filed by Mr. Peters, Ms. de Armas submitted that there was neither irregularity in the judgment of 13 February 2013, nor lack of good faith. It was submitted that the cross summons should be dismissed with costs.

47. Mr. Peters submitted that the doctrine of *res judicata* does not operate to prevent him bringing the proceedings filed second in time in the Local Court. He contended that the doctrine of *res judicata* did not apply, because the determination of the first set of proceedings did not determine precisely the same matter as the second, and nor were the issues decided between "*the same parties in the same respective interests or capacities, or between a*

privy of each, or between one of them and a privy of the other in each instance in the same interest or capacity": *Ramsay v Pigram* [1968] HCA 34; (1968) 118 CLR 271 at [276] per Barwick CJ.

48. It was contended that, as the capacities in which the insurer and insured in the present matter sued are different, *res judicata* did not operate to bar Mr. Peters' action in the Local Court.

49. Noting that the issue of capacity is to be determined by reference to substance not form, it was submitted that it was open to her Honour to conclude that the first set of proceedings were brought by Mr. Peters in his personal capacity seeking damages for personal loss relevant to the use of a hire car, whilst the second set of proceedings were brought by Mr. Peters in name only, in respect of the rights subrogated to the NRMA under the policy of insurance.

50. As to the cross-appeal Mr. Peters only seeks to have that matter determined in the event that Ms. de Armas is successful, and only on the basis that, because of her conclusions with respect to the de Armas motion, her Honour did not go on to determine the Peters motion on its merits, that being unnecessary in the circumstances.

Determination

51. As her Honour said in her judgment of 16 April 2014, her decision was (correcting the transcription error) "line ball".

52. It is clear that the learned magistrate took the view that the action initiated in the Local Court by Mr. and Mrs. Peters was a limited one which did not plead nor seek to have determined the entirety of the issues between the parties. There was no attempt in the Peters summons to have the issue of negligence relevant to the damage to Mr. Peters' motor vehicle determined; the claimed amount related only to an amount for the use of a hire car.

53. It appears that the policy of insurance between the NRMA and Mr. Peters provided cover for a hire car for a limited period of fourteen days from the date of the crash. Mr. Peters in fact incurred additional hire car costs in his personal capacity, over and above the cover provided by his policy. He sought recovery of those discrete costs in that same personal capacity in the action filed initially by him.

54. Ordinarily, it is the privity of interest which determines whether the parties are considered to be the same. "Privity of interest" was defined by Sir Robert Megarry VC in *Gleeson v J Wippell & Co Ltd* [1977] 1 WLR 510 as

"a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party (at 515)."

55. Implicit in her Honour's determination of the matter is a conclusion that there was not a sufficient degree of identification between Mr. Peters

acting in his personal capacity and the NRMA acting through Mr. Peters, to regard a decision relevant to one entity as binding on the other. Whilst the cause of action may have been the same, the redress sought was very different and, accordingly, it was open to her Honour to consider that the matters litigated and the interests determined were also different.

56. Although reasonable minds might differ as to the conclusion reached, it is not without precedent.

57. In *Linsley v Petrie* [1998] 1 VR 427, the Victorian Court of Appeal considered that an insurer with a conflicting interest would not be bound by issue estoppel from earlier proceedings brought in the insured's name, in which the real party was his insurer (at [445] – [446] per Callaway AJA, [450]-[451] per Smith AJA).

58. Smith AJA made some further obiter remarks (at [451]) to the effect that it was difficult to accept that issue estoppel should bind a litigant as to issues raised and determined in earlier proceedings that were not initiated by that person and over which he or she exercised no control.

59. Arguably, the same should apply to the question of the applicability of the doctrine of *res judicata*. The NRMA, a party with a legitimate interest in the determination of the issue of negligence relevant to the 2012 collision, did not initiate the (very limited) claim filed by Mr. Peters, and had no say in the pleadings or in the manner in which the litigation was conducted and the issues raised by it for determination. Its complete ignorance of the suit arose, certainly by the default of Mr. Peters but also, in her Honour's view, by the almost studied failure of the plaintiff's representatives to refer to it in dealings with the NRMA. Her Honour was clearly of the view that, should the de Armas motion succeed, an injustice would be occasioned to the NRMA, and the real issues between the parties would not have been litigated.

60. Bearing in mind the overriding purpose of the *Civil Procedure Act* 2005 (at s.56) to achieve the just (and quick and cheap) resolution of the real issues in the proceedings, I am not persuaded that the conclusion reached by her Honour was not open to her in all of the circumstances.

61. Similarly and whilst, again, reasonable minds might differ as to the conclusion reached by the learned Magistrate, I am not persuaded that the effect of s.24 of the Act is to preclude the court from hearing and determining the real issues raised by the second set of proceedings and that, accordingly, the de Armas motion should have been granted.

62. Her Honour's ruling leaves it open to the parties to have heard and determined the real issues in the proceedings, and prevents one litigant from taking advantage of the actions of another to shut out from the proceedings an entity with a legitimate interest in the proceedings.

63. I am not persuaded that there has been any injustice to Ms. de Armas such that leave should be granted to appeal.

64. Nor am I of the opinion that this is an issue with the wider importance that the plaintiff argues for, such that leave should be granted. Whilst issues relevant to the rights of insurance companies and notions of subrogation generally may be of interest beyond the parties to these proceedings, a decision of a magistrate in the Local Court can have no binding effect on the Local Court more generally, and nor can a decision of a single justice of this Court have the great significance that Ms. de Armas contends it will.

65. In any event, this case turns on its own facts.

66. For those reasons I do not propose to grant leave to the plaintiff to bring her appeal against the interlocutory orders of the Local Court.

67. That being so, leave should also be refused to Mr. Peters to bring the cross-appeal.

68. The costs of these proceedings should be borne by Ms. de Armas on an ordinary basis.

ORDERS

(1) Leave to bring an appeal against the orders of the Local Court of 16 April 2014 is refused. The plaintiff's summons is dismissed.
(2) Leave to bring a cross-appeal against the orders of the Local Court of 16 April 2014 is refused. The defendant's summons is dismissed.
(3) The costs of the proceedings in this Court are awarded in favour of the defendant, to be paid on the ordinary basis by the plaintiff.

****