

MEMORANDUM

TO: Senior Partner

FROM: Student's Name

DATE:

RE: Justification of a necessity to obtain helpful information for Blue Skies Estate Ltd. from the plaintiff Ms. Donna Donner whether by the use of court authority or interrogatories

A concise label for the issue considered: mention the parties; your firm will file your Memo by names and cause of action-and, perhaps, by jurisdiction)

RESULT

At times, courts authorize the opposing parties to provide relevant information that could lead to provision of the legal facts, or even help parties understand the proceedings that occur before the particular court. In this regard, it is most likely that if the defendant places such a request, it will be granted.

ANALYSIS

The lawsuit affirms a number of causes of proceedings against Blue Skies Estate Ltd., the defendant, who is alleged to be in the business of selling plots of lands and providing efficient equipments for generation of electricity. Many legal facts are to be provided by the defendant to prove that the cause of the fire was not linked to his responsibilities. In the interrogatory, the defendant request for the answers from the plaintiff on the installation of the generator. This is to be done to help the defendant ascertain whether the electrician was well trained on how to handle this service as evidenced in Supreme Court Rules 2006 (SA) Rule 150(1). Drawing upon *Aspar Autobarn v. Davora* (1987) 47 ALR 550, most information collected by the defendant could be helpful in clarification of the facts that the defendant may not be able to obtain from any other sources by means of using the interrogatories as the matters sought could only be privy to the plaintiff.

Further, the defendant requires for information as to whether the plaintiff and the electrician had properly read the instructions before commencing the installation process. It is of utmost importance that instructions are read before installation to caution on mishandling of the equipment. Information from a former employee

contacted by the defendant shows that most clients who had complained of the generators burning their houses had not made references to the instructions. The written questions formulated by the defendant relate to the question in issue and are necessary to develop a chain of facts in proving whether or not the generator installation was the main cause of the fire with analogy to *Barbarian Motorcycle Club Incorporated v. Koithan* (1984) 35 (SASR) 481.

Moreover, the defendant is seeking more information as to activities of the plaintiff and the electrician during the installation process. The plaintiff is legally bound to pass all information requested by the defendant and not express pessimism in providing some or all of the sought information. It is the plaintiff's duty to answer questions of one's own knowledge and belief. If the answers are beyond the plaintiff's competence, one must make inquiries of the agents and include that information in answers to questions in accordance with *Sharp v. Smail* (1975) 49 ALJR 130.

The defendant intends to use the responses given by the plaintiff to make requests and presentations to the court. *Blue Skies Estate Ltd.* has an aim of properly arranging the responses to favour their argument with information collected from the plaintiff. They also intend to make all facts clear as to what went on during the installation process of the generator. This information may be accepted in court in full or partially as evidence during the trial in line with Supreme Court Rules 2006 (SA) Rule 152.

ETHICAL ISSUES

The case could raise a number of ethical issues. One of them is the fact that the Supreme Court Rules 2006 (SA) Rule 151(3) allows the plaintiff to object providing an answer to a question put on any ground where an objection can properly be made. This is mostly due to the case if the questions are made during the trial proceedings or when they are required to set out their response through a text. However, in the case *Barbarian Motorcycle Club Incorporated v. Koithan* (1984) 35 (SASR) 481, questions formulated by the defendant, which are related to issue in question, have been important to the establishment of chains of facts in understanding whether or not the installation process of the generator was the main cause of the fire.

Further, a cited case *Austral Ships Pty Ltd v. Incat Australia Pty Ltd (No 3)* (2010) FCA 795 allows the plaintiff to avoid questions that may constitute fishing expeditions. It is necessary to note that most interrogatories by the defendant are usually made on the basis of allegations and deep suspicion that the plaintiff has a contributory negligence. Nonetheless, this is highly countered by the defendant through *Sharp v. Smail* (1975) 49

ALJR 130, where the argument was grounded on that the plaintiff is obligated to respond to questions as to their own knowledge and believe of facts. Whereas the information is out of the knowledge of the plaintiff, she will be required to make inquiries through her agents and present the information required.

Despite the above citation, the plaintiff may seek to avoid giving answers to questions on an argument that these questions do not serve the court in establishing the chronological occurrence of events. The plaintiff can argue that the questions are not directed into providing the answer as to whether or not the generator installation was the main cause of the fire citing the ruling on the case Barbarian Motorcycle Club Incorporated v. Koithan (1984) 35 (SASR) 481. Nevertheless, if the defendant feels that they have exhausted all the avenues to obtain information, and thus decides to use interrogatories, it is ethically significant that the plaintiff provides such important information when requested since the matters are peculiarly in the knowledge of the plaintiff and not available by any other means.

Another ethical issue that could arise is the fact that the plaintiff is not required to answer interrogatories as they do not contribute to fair disposal of the action or to save costs, as cited in the case Pearce v. Hall (1989) 52 SASR 568. However, the court may overrule this by that the court may receive a response of the plaintiff respondent, or part of it, in evidence at the trial.

In the legal tussle, frequently ethical issues arise. For example, the plaintiff does not seem to make provision of all the needed information. Nonetheless, this circumstance draws the situation into a dilemma as the law allows individuals to avoid response to questions where they may be forced to incriminate themselves. Again, although the plaintiff had the opportunity to make the appropriate request, she did not. It is most likely that the plaintiff ought to have consulted the defendant on where the equipment was purchased to provide her with clear information on the installation.

COMMENT

Founded on the statues and case laws above and the analysis conducted, the circumstances under which the defendant is able to make a request concerning interrogatories should be granted. In terms of granting permission for interrogatories, it is to be considered that information requested by the defendant's could only be obtained from the plaintiff, who might not be so willing to make it known to the defendant, unless it is authorized by the court as derived from the case Aspar Autobarn v. Davora (1987) 47 ALR 550.