

ABACUS AUSTRALIA LTD V BRADSTOCK G I S PTY LTD [2000] VSC 111

Supreme Court of VIC – 24 March 2000

FACTS

On 24 March 1998, the Court ordered by interim injunction that Bradstock be restrained from using confidential information it had received from Abacus. The Court also ordered that Bradstock provide discovery of documents relating to insurance policies received or created by Bradstock.

Abacus did not receive discovery as ordered by the Court but served its Statement of Claim on 4 November 1998 and on 13 May 1999 it served a Notice for Discovery on Bradstock. Bradstock still failed to provide discovery and on 6 July 1999, Abacus served a Notice of Default on Bradstock. As Bradstock did not make discovery, Abacus made an application to the Court and on 16 July 1999 the Court ordered that the parties by 26 July 1999 serve timetables for further interlocutory steps in the proceeding.

On 29 July 1999, the Court was told that Bradstock had still not made discovery and made orders that Bradstock provide discovery by 26 August 1999, failing which its defence would be struck out. Bradstock failed to make discovery and on 9 November 1999 the Court ordered judgment for Abacus in the terms of the orders made on 24 March 1998.

On 10 March 2000, Bradstock applied to have the judgment dated 9 November 1999 set aside.

ISSUES

Should the Court exercise its power and set aside the judgment against Bradstock?

FINDING

Bradstock had failed to explain why it had not provided discovery or why it had taken so long to apply to have the judgment set aside.

In any event the case against Bradstock had been shown to be very strong at the interlocutory application for the interim injunction and there was no good reason for the judgment to be set aside.

QUOTE

Beach J said:

“The defendant [Bradstock] has still not complied with the order of the Master Bruce made on 29 July 1999, nor has it provided to the court any explanation for its failure in that regard. ... The defendant has not provided to the court any explanation for its failure to make application to the court to set the judgment aside prior to today. The judgment was entered on 9 November [1999] and here we are, close to five months down the track, before the defendant makes its present application.”

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IMPACT

The Court will usually allow a party which fails to comply with interlocutory orders an opportunity to remedy their default.

However, if the party consistently fails to comply with orders without good reason then the Court may strike out their claim or defence.

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