

BLACK V WALKER (2000) NSWSC 983

Supreme Court of New South Wales - 27 October 2000

FACTS

Black gave Walker a diamond ring for their engagement. When the engagement broke down, Black demanded the ring back, but Walker refused return the ring. Walker contended that Black had taken the ring back from her premises but Black insisted that he had not done so and was therefore entitled to have the ring returned to him. Walker was cross-examined on a conversation with her neighbour, Gorman where she allegedly admitted to having the ring in her possession. Black applied for the case to be reopened to admit evidence from Gorman.

The Magistrate refused to admit Gorman's evidence and reopen the plaintiff's case.

ISSUES

Was the Magistrate wrong to refuse to admit evidence from Gorman as lead evidence in re-opening the case of the Black?

FINDING

The Court found that the Magistrate was correct in refusing to admit evidence from Gorman in reopening the case because Black should have led the evidence in chief when he had the opportunity to do so. The evidence of Gorman was not relevant to the substantive fact in issue and it could only relate to a matter of credit.

If Black's application to reopen his case was granted, then his case would have been split because the application to reopen was not limited to Gorman's evidence, but it covered general terms and encompassed the calling of a number of witnesses.

QUOTE

Levine J said:

"During the course of the application to reopen the case, no mention was made of Gorman though the reference was made to seeking to call evidence of conversations "first of all that the Defendant had with people who I intend to call as witnesses." Those people apparently were to be called to state that they spoke with the Defendant who said that she was not going to return the ring.

Secondly, it was intended to call witnesses, or a witness who would say that the plaintiff had attempted to get them to make false statements in relation to the proceedings. The application therefore to reopen was a far wider ambit than a more focused issued the subject of the first contention in the Stated Case."

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IMPACT

The Court will only allow for a case to be reopened if the evidence to be tendered was relevant to a substantive fact in issue.

Generally, Courts are reluctant to reopen the case to admit evidence if it encompassed more than the issue focused on or involved the calling of several witnesses.

The Plaintiff or Defendant has to ensure that all evidence that is relevant to the substantive fact in issue is covered in examination in chief.

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