

GIO General Limited v Allen

NSW Court of Appeal No. CA 40860/02

**Judgment of Handley and Hodgson JJA delivered 30
September 2002**

CIVIL LAW - CONTRACT - CALDERBANK OFFER

GIO ("the claimant") in 1998 commenced proceedings against Mr Allen ("the opponent"), seeking indemnity pursuant to the *Workers Compensation Act (NSW)* in respect of payments made by the claimant to one of the opponent's workers pursuant to that Act.

The claimant maintained that the opponent had been negligent in causing the worker's injuries. The matter was set for trial in the District Court commencing 23 September 2002.

On 19 September 2002 the opponent sent the claimant a letter, offering to settle for \$175,000 inclusive of costs. The letter concluded:

"This offer is made in accordance with the principles in *Calderbank v Calderbank* and is expressed to be open until 5.00pm on Friday 20 September 2002."

At 10.30am on 20 September the opponent rejected the last of three counter offers made by the claimant, and purported to withdraw his *Calderbank* offer. One hour later the claimant purported to accept the *Calderbank* offer. On 23 September the claimant sought leave from Sorby DCJ to amend its statement of claim to one

for damages for breach of contract, constituted by the above events.

His Honour dismissed this application with costs on 25 September, holding that the *Calderbank* offer could be withdrawn before acceptance, in accordance with ordinary contract principles.

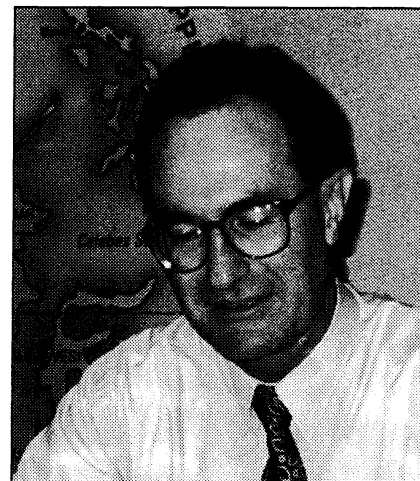
The claimant sought leave to appeal.

HELD (the Court)

1. On ordinary contract principles, a *Calderbank* offer maybe withdrawn before acceptance.
2. Summons for leave to appeal dismissed with costs.

The Court of Appeal noted that no evidence was led before Sorby DCJ of reliance by the claimant, to its detriment, on the opponent's representation that the *Calderbank* offer would be held open until 5pm on 20 September.

The Court rejected the claimant's



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argument that courts deal with *Calderbank* letters in a similar way to offers of compromise under the court rules, and that *Calderbank* offers therefore cannot be withdrawn. Their Honours described this submission as being "clearly wrong". The Court observed that the claimant did not allege a contract made with consideration, or by deed, to hold the offer open until 5pm on 20 September.

APPEARANCES

Claimant - Toner SC and Regattieri / Cutler Hughes & Harris

Opponent - Biscoe QC and Bell / Abbott Tout (Sydney)

Practice Direction from the CJ of the Family Court

His Honour Alastair Nicholson has issued the following Practice Direction (No 4 of 2002).

**APPLICATIONS FOR CONTACT/
RESIDENCE DURING THE CHRISTMAS
SCHOOL HOLIDAY PERIOD: NATIONAL
FILING DEADLINE**

In order to properly and expeditiously hear disputes relating to contact/residence with children during the 2002/03 summer school holiday period a national filing deadline has been fixed.

Subject to numbers being within expected limits the Court anticipates allocating hearing dates prior to

Christmas for applications filed prior to the deadline. The Court cannot guarantee that applications filed after the deadline will be fixed for hearing prior to Christmas.

Which applications:

All Form 8 or other applications seeking orders relating to contact (or a period of residence) during the December 2002/ January 2003 school holiday period.

Closing date for filing:

4pm on Monday 11 November 2002

Consequences:

Applications filed after 11 November 2002 will be allocated the next available date in the usual way. That date may be in 2003.

Exceptions

After 11 November 2002 applications to abridge times and to list a matter on short notice can be made to Registry staff. The usual criteria for an urgent hearing will apply. The fact an application relates to school holiday contact will not of itself justify a listing before Christmas.