

The get out of jail free card: When is a dismissal not a dismissal

Ruby v Doric Constructions (Australia) Pty Ltd [2013] WASC 94

Insurance Update

Why this bulletin is important to you

You should read this bulletin if you presently have matters in the District Court.

The Court of Appeal held on 9 April that the purpose of the standard case management timetable prescribed by Rule 30 of the *District Court Rules* (WA) (“DCR”) was simply to provide a guide to the timetable to be fixed in an action. Therefore, in cases which the standard case management timetable applies, that is where the entry for trial milestone is not set by Court order, a failure to enter the action by the date “suggested” by the standard timetable will no longer result in actions being automatically placed on the Inactive Cases List (“ICL”).

The Case Management Timetable

Prior to the decision in *Ruby v Doric Constructions (Australia) Pty Ltd* [2013] WASC 94, the practice of the District Court was to issue a case management timetable to each of the parties after a defence was filed.

If an action was not entered for trial by the date set out in the case management timetable and Court orders were not made extending the time for compliance, then the Court would issue a notice pursuant to rule 38 of the DCR (“Default Notice”) advising the parties that unless one of them entered the action for trial within 14 days, the action would become inactive.

Actions not entered for trial by the date prescribed in the Default Notice, would be placed on the ICL. If an action remained on the ICL for six continuous months it would be deemed to be dismissed.

The decision

This is basically what occurred in the District Court action involving Rodney Ruby. That is, that his action was dismissed as it was placed on the ICL and was not entered for trial within the 6 month timeframe.

Who does this affect?

- Anyone who presently has a civil matter in the District Court.

Article Highlights

- The standard case management timetable in the District Court is to be used as a guide only.
- Actions will no longer be placed on the Inactive Cases List for failing to comply with the entry for trial milestone prescribed by the standard case management timetable.
- Some matters on the Inactive Cases List may have been placed on the list irregularly.



Ruby appealed against the decision of Commissioner Gething, who refused his application for orders that the dismissal of his action be set aside and the action be removed from the ICL.

On appeal it was held that the parties were not obliged to comply with the standard timetable, without an order of the Court requiring them to do so. In other words, the standard timetable could not be considered an enforceable order. Accordingly, the Court found that there was no timetable applicable to Ruby's case and therefore no proper basis for the Court to issue a Default Notice. The action could not therefore be taken to be inactive.

Implications of the decision

As a result of the decision in Ruby, the District Court will no longer issue Default Notices to parties which fail to comply with the entry for trial milestone set out in the standard timetable. Rather, in such cases, the parties will now be summonsed to attend a hearing before a Registrar to show cause why the action should not be put on the ICL.

The District Court is currently reviewing all actions on the ICL to determine whether any actions have been placed on the ICL on an irregular basis. Any such cases identified will be listed for directions.

What this means for current claims on the ICL?

Where you have matters currently on the ICL, you can expect a summons for directions will be issued by the Court in the near future.

The purpose of the summons will be to enable the Court to make orders allowing the proper prosecution of the action.

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Contact Us

t +61 8 9426 6611 f +61 8 9321 2002 e jacmac@jacmac.com.au

a Level 25, 140 St Georges Terrace, Perth, Western Australia 6000
GPO Box M971, Perth, Western Australia 6843

www.jacmac.com.au

Contact



Alex Lustig
PARTNER

t: +61 8 9426 6733
e: alustig@jacmac.com.au



Zaneta Witherington
ASSOCIATE

t: +61 8 9426 6656
e: zwitherington@jacmac.com.au