



Default Judgements: To Review or Not to Review, that is the Question...

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This article is written in the spirit of collegiality as a practical guide for practitioners considering whether to review an erroneous Default Judgment.

UCPR Rule 791

In Queensland, a decision of a Registrar can be "appealed" under Rule 791 of the *Uniform Civil Procedure Rules* (UCPR). The Rule provides a party, dissatisfied with a decision, with the right to bring an application under Rule 791 (**Application**) for the decision to be reheard.

When an Applicant files a Request for Default Judgment (**Request**) and the Registrar either refuses to grant Default Judgment or issues Default Judgment for amounts different to those claimed in the Request, the Applicant must decide whether to review or not to review.

A decision to review is not one to be taken lightly but is open to an Applicant

where:

1. a fundamental error has been made by the Registrar; or
2. the Registrar either refuses to grant Default Judgment or issues Default Judgment for amounts different to those claimed in the Request and no reasons have been provided.

Broadley Rees Hogan (**BRH**) recently succeeded in an Application on the basis that:

1. a fundamental error had been made by the Registrar in granting Default Judgment other than in accordance with the Request (a difference of nearly \$42,000);



2. there was a miscalculation in the amount granted for interest;
3. no reasons were provided; and
4. the Registrar's position did not change despite BRH writing to the Registrar detailing the errors and seeking reasons.

The Proceedings

The Applicant in these proceedings entered into a Loan Agreement with the Respondent which provided for:

1. the provision of loan monies;
2. an obligation to repay the loan monies by a specific date;
3. in the event of default, interest at a rate (significantly) in excess of the rate prescribed by the *Civil Proceedings Act 2011 (the Act)*; and
4. an obligation to pay all the Applicant's costs relevant to the default.

The Respondent defaulted and the Applicant filed and served a Claim and Statement of Claim. The Respondent did not file any Notice of Intention to Defend and Defence. The Applicant filed a Request.

The Request sought Default Judgment against the Respondent for:

- a) loan monies;
- b) default interest pursuant to the Loan Agreement; and
- c) costs pursuant to the Loan Agreement.

Without furnishing reasons, the Registrar issued a Default Judgment in favour of the Applicant for:

- a) the loan monies;
- b) interest at the rate prescribed by the Act; and
- c) scale costs.

The difference between the Default Judgment issued by the Registrar and the Default Judgment sought by the Request

was in the vicinity of \$42,000.00.

Despite written requests, the Registrar and the Magistrate to whom the Registrar deferred, did not amend the Default Judgment nor furnish reasons for declining to provide Default Judgment in accordance with the Request.

Application for Re-Hearing of Registrar's Decision

BRH elected to seek leave to review the Registrar's Default Judgment under Rule 791.

At the hearing of the Application, BRH was successful in:

1. obtaining leave of the Court to rehear the Request;
2. having the Registrar's Default Judgment set aside; and
3. obtaining an order for Judgment in the amounts set out in the Applicant's Request.

The Magistrate hearing the Application agreed with BRH's submissions that:

- a) where Default Judgment is sought for a liquidated demand, a Registrar is not required to consider the merits of the plaintiff's claim¹;
- b) a liquidated demand for the purposes of Rule 283 includes a demand for interest pursuant to a debt under an agreement² and costs pursuant to an agreement where the costs are a "genuine pre-estimate of damage in the event of a breach"³;
- c) the Applicant's Request was for a liquidated demand pursuant to Rule 283 and the Registrar erred in making an assessment of costs and/or considering the merits of the Request.

BRH further submitted that there was a breach of natural justice by reason of the Registrar:

- a) not corresponding with the Applicant regarding any alleged deficiency



in the Request prior to making the Default Judgment;

- b) not providing the Applicant with an opportunity to address any perceived deficiency prior to the Default Judgment being made;
- c) not providing reasons for refusing to give Default Judgment in accordance with the Request; and
- d) not considering correspondence from BRH regarding the errors in the Default Judgment.

To ensure the Applicant did not miss out on the post-judgment interest, BRH sought that the new Judgment be effective from the date of the original Default Judgment.

Following the hearing of the Application, the Magistrate ordered that:

1. The Registrar's Default Judgment be set aside; and
2. In lieu thereof, Judgment be entered for the Applicant in the amounts set out in the Request effective from the date of the original Default Judgment.

If you would like to discuss this article further please contact:

[Stuart Rees | Director](#)

D (07) 3223 9105

E stuart.rees@brhlawyers.com.au

[Kajol Kannan | Lawyer](#)

D (07) 3223 9126

E kajol.kannan@brhlawyers.com.au

¹ UCPR r 283 (10).

² *Bendigo and Adelaide Bank Ltd v Patel* [2018] QDC 84.

³ *Environmental Systems Pty Ltd v Peerless Pty Ltd* [2008] VSCA 26 at [79] (Nettle JA).