

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 17th May, 1993; and has effect on and from 28th May, 1993.

2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:

(a) Part 3 rule 11

Omit the rule, insert instead the following rule:

Applications concerning judgments in the Small Claims Division

11. (1) Any application to a court concerning an action in respect of which judgment has been given or entered up in the court's Small Claims Division must be heard and determined:

(a) in the case of an application to set aside a judgment which was given after a hearing to which the court proceeded under Part 21 rule 2 (1) (a)—in the court's Small Claims Division; and

(b) in any other case—in the court's General Division.

(2) Where a court sitting in its General Division makes an order in respect of an application referred to in subrule (1) the court shall not order any party to pay costs in respect of the application in an amount greater than the amount which the court would have been able to order if the application had been heard and determined in the court's Small Claims Division.

(b) Part 13 rule 2 (4)

In the Table, omit the matter:

“After 16th February, 1992 11.25”,

insert instead the matter:

“17th February, 1992 to 27th May, 1993 11.25

After 27th May, 1993..... the rate prescribed for the purposes of Section 95 (1) of the Supreme Court Act 1970”.

(c) Part 13 rule 3

In the Table, omit the matter:

“After 16th February, 1992 11.25”,
insert instead the matter:

“17th February, 1992 to 27th May, 1993 11.25”

After 27th May, 1993 the rate prescribed for the purposes of Section 95 (1) of the Supreme Court Act 1970”.

(d) Part 21 rule 1AA

- (i) In subrule (1), after “but” insert “, subject to subrule (1A);”;
- (ii) After subrule (1) insert the following subrule:
 (1A) Rule 2 applies to actions in a court’s Small Claims Division.

(e) Part 31 rule 12

- (i) After subrule (3) insert the following subrule:
 (3A) If a court sitting in its Small Claims Division makes an order setting aside a judgment, it may award costs to a party against another party.
- (ii) In subrule (5) after “subrule (3)” insert “, (3A).”

(f) Part 38 rule 2

- (i) In paragraph (c), omit “arbitration.”, insert instead “arbitration; or”;
- (ii) After paragraph (c) insert the following paragraph
 (d) if the defendant has included in the notice of grounds of defence filed in the action any allegation to the effect that the claim of the plaintiff is fraudulent, either as to the whole of the claim or as to a substantial part thereof.

EXPLANATORY NOTE

The purpose of amendments (a) and (e) is to alter the requirement that an application to set aside a judgment given in the Small Claims Division must be heard in that Division so that the requirement applies only to a judgement given after a hearing on the merits of the action, to provide that an application to set aside a judgment given in the Small Claims Division can attract an award of costs, and to ensure that those costs cannot exceed Small Claims Division costs no matter in which Division the application is heard.

The purpose of amendments (b) and (c) is to establish a nexus between interest rates in the Local Courts and those in the higher Courts.

The purpose of amendment (d) is to ensure that a judgment given *ex parte* in the Small Claims Division can be set aside on sufficient cause being shown.

The purpose of amendment (f) is to ensure that, as in the District Court, an action on a claim which the defendant alleges is fraudulent cannot be referred to arbitration under the Arbitration (Civil Actions) Act 1983.

R. J. O'GRADY,
Secretary to the Rule Committee
