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Parties

Supreme Courts Civil Rules 2006 (SA)

Chapter 5—Parties and pleadings

Part 1—Parties and non-party participation

Division 1—Parties generally

73—Action may include multiple parties

- (1) A single action may be brought by two or more plaintiffs if—
 - (a) they each claim to have a cause of action against the same defendant arising from the same or similar facts; or
 - (b) the claim of each involves the determination of a common question of law or fact; or
 - (c) the Court gives its permission.
- (2) A single action may be brought against two or more defendants if—
 - (a) the claim against each arises out of the same or similar facts; or
 - (b) the claim against each involves the determination of a common question of law or fact; or
 - (c) the Court gives its permission.
- (3) If a plaintiff is jointly interested in the subject matter of an action with some other person who has not consented to be joined as a plaintiff, the plaintiff must apply to the Court for directions and, on such an application, the Court may exercise one or more of the following powers—
 - (a) authorise the plaintiff to proceed with the action as representative of any interested person who is not a party to the action;
 - (b) authorise the plaintiff to proceed with the action in a non-representative capacity despite the other person's non-participation and determine the extent (if any) to which the other person is to be entitled to participate in any proceeds of the action;
 - (c) give directions the Court considers appropriate in the circumstances.

74—Joinder and disjoinder of parties

- (1) The Court may, on application or on its own initiative, order that a person who is not a party to the action be joined as a party if satisfied that—
 - (a) the person has an interest in the subject matter of the action or in a question of law or fact involved in the action; or
 - (b) the Court may require the person's cooperation in order to enforce a judgment; or
 - (c) the person has a right to joinder as a party under an Act or rule; or
 - (d) the person should be joined as a party to ensure that all matters in dispute in the action are determined; or

- (e) the person should be joined as a party in order to enable determination of a related dispute and thus avoid multiplicity of proceedings.
- (2) The Court may, on application or on its own initiative, order the disjoinder of a party if satisfied that it is in the interests of the efficient administration of justice to do so.
- (3) Before the Court makes an order for the joinder or disjoinder of a party, the Court must ensure that all parties to the action and, if appropriate, the person who may be joined as a party, have had notice of the application or proposal for joinder or disjoinder and an opportunity to be heard on the question.
- (4) The Court may make an order for the joinder or disjoinder of a party on conditions the Court considers appropriate.
- (5) The Court cannot join a person as a defendant to an action under this rule if, because of the expiration of a period of limitation, an action based on the relevant cause of action could not be commenced against the person at the date of the order for joinder.
- (6) However—
 - (a) the Court may treat an application to join a person as a defendant as originating process for an action against the person sought to be joined and may exercise any statutory power to extend the period of limitation accordingly; or
 - (b) the Court may, after the expiration of a relevant period of limitation, join a person as a defendant to an action if satisfied that the plaintiff genuinely intended to bring the action against that person but, as a result of a genuine mistake, failed in the action as originally formulated to identify that person, or to identify that person correctly, as a defendant.

75—Substitution or addition of party where interest or liability passes

- (1) If an interest or liability of a party to an action passes from the party to another person by assignment, transmission, devolution or in some other way, the Court may—
 - (a) substitute the other person as a party in place of the party from whom the interest or liability has passed; or
 - (b) add the other person as an additional party to the action.
- (2) If the other person is already a party to the action in some other capacity, an order under this rule makes the person a party in the additional capacity.
- (3) An order under this rule must be served on—
 - (a) any person who is introduced as a party into the action by the order; and
 - (b) all existing parties to the action.

76—Death of party

- (1) If a party is dead when an action is commenced apparently by or against the party, the action is irregular but not invalid.
- (2) If a party dies after an action commences but before it is finally determined, the action is not invalidated by the party's death.
- (3) The Court may deal with the action in any of the following ways—
 - (a) the Court may substitute the party's personal representative for the party (irrespective of whether probate or administration has been granted or re-sealed in the State);

- (b) the Court may appoint a representative of the estate for the purposes of the action;
- (c) if provision is made by statute for the action to be brought or continued by or against an insurer in the event of the party's death—the Court may substitute the insurer.

Example—

See section 113 of the *Motor Vehicles Act 1959*.

- (4) However, if the action is based on a cause of action that does not survive the party's death, the Court must dismiss the action.
- (5) If a representative of an estate is appointed under this rule for the purposes of an action, a judgment of the Court given in the action is, subject to any contrary order of the Court, binding on the estate, the administrators and beneficiaries of the estate.

77—Misjoinder or non-joinder not to affect validity of action

- (1) The validity of an action is not affected by the misjoinder or non-joinder of a particular person as a party.
- (2) In the case of misjoinder or non-joinder, the Court may determine the issues in dispute so far as they affect the persons who have been properly joined as parties.

Division 2—Representation of party under disability

78—Representation of party under disability

- (1) As a general rule, a person under a disability (a **protected person**) may only take or defend proceedings through a guardian who has authority to represent the interests of the protected person (a **litigation guardian**).

Exception—

The Court may, however, permit a protected person to act personally in bringing, or taking any step in, proceedings.

- (2) The litigation guardian is responsible for the conduct of the proceedings on behalf of the protected person and may take any step in the proceedings and do anything else that the protected person might have done if of full age and capacity.
- (3) A party who becomes aware that another party is a protected person and is not represented by a litigation guardian as required by this rule must inform the Court of that fact.
- (4) A judgment or proceeding of the Court is not invalid because a party was not represented by a litigation guardian as required by this rule, but the Court may set aside the judgment or proceeding if satisfied that the party has been substantially prejudiced through the lack of such representation.

79—Litigation guardians

- (1) Any of the following may be the litigation guardian of a protected person—
 - (a) a parent or guardian;
 - (b) a person who holds an enduring power of attorney authorising the person to act on the person's behalf;
 - (c) a person who has some other lawful authority to manage or administer the person's affairs;

- (d) a person permitted or appointed by the Court to represent the interests of the protected person.
- (2) However—
- (a) if a person's authority would not (apart from these rules) extend to representing the protected person in proceedings before the Court—the person requires the Court's permission to act as litigation guardian in the proceedings; and
 - (b) a person who has an interest in proceedings before the Court (apart from his or her interest as representative of the protected person) cannot act as the protected person's litigation guardian in the proceedings unless the Court directs to the contrary.
- (3) The Court may, on application by an interested person or on its own initiative, permit or appoint a suitable person to be a protected person's litigation guardian.
- (4) The Court may remove the litigation guardian of a protected person (whether or not appointed by the Court) on any reasonable ground and may permit or appoint some other person to be the litigation guardian.
- (5) The Court may require the solicitor for a protected person to inquire into, and give it an assurance about, the suitability of a proposed litigation guardian.

Division 3—Representation of groups etc

80—Bringing of representative action where common interest exists

- (1) If a group of persons has a common interest in the subject matter of an action or proposed action and a member of the group is authorised in writing by the other members of the group to bring or defend the action as representative of the group, the person may bring or defend the action as representative of the group.
- (2) A person who brings an action as representative of a group under this rule must file in the Court the written authorisation to represent the group when filing originating process.
- (3) A person who defends an action under this rule as representative of a group must file in the Court the written authorisation to represent the group as soon as practicable after the authorisation is given.
- (4) The written authorisation must contain a list of the names and addresses of the persons authorising the person bringing or defending the action to act on their behalf.
- (5) The Court may, at any time, terminate the right of a representative plaintiff or defendant under this rule to represent the relevant group of plaintiffs or defendants.

81—Court's power to authorise representative actions

- (1) The Court may authorise a plaintiff to bring an action as representative of a group with a common interest in questions of law or fact to which the action relates.
- (2) If a plaintiff intends to apply for an authorisation under this rule, the action may be commenced in the ordinary way but the originating process must bear an endorsement in the approved form stating that the plaintiff proposes to apply for the authorisation.
- (3) An application for an authorisation under this rule must be made within 28 days after the time allowed for the defendant to file a defence.
- (4) An authorisation under this rule is not to be refused on the ground that—

- (a) damages which would require individual assessment are sought by way of remedy; or
 - (b) the action is based on separate contracts or transactions between individual members of the group and the defendant.
- (5) An order authorising a plaintiff to proceed with an action as a representative action under this rule must—
- (a) define the group on whose behalf the action is brought; and
 - (b) define the nature of the claim or claims made on behalf of the members of the group and specify the remedy sought; and
 - (c) define the common questions of law or fact that are to be determined in the action; and
 - (d) give directions about the determination of other issues raised in the action that are not common to all members of the group.
- (6) The Court may vary the order at any time before the Court gives final judgment in the action.

82—Appointment of representative party in case of multiple parties

- (1) If an action is commenced by or against two or more plaintiffs or defendants who have a common interest in the action, the Court may appoint one or more of the plaintiffs or defendants to represent the whole body of plaintiffs or defendants (as the case may require).
- (2) The Court may, at any time, terminate an appointment under this rule.

83—Representative actions by or against executors, administrators and trustees

- (1) An action may be brought by or against the executors or administrators of the estate of a deceased person as representatives of all persons interested in the estate.
- (2) An action may be brought by or against trustees as representatives of all persons interested in a trust.
- (3) However, the Court may, on its own initiative or on application, join a person with a beneficial interest or potential beneficial interest as a party to such an action.
- (4) The Court may appoint a person to represent the estate of a deceased person in an action.

84—Appointment of representative parties for class of beneficiaries etc

- (1) This rule applies to an action about—
 - (a) the administration of the estate of a deceased person; or
 - (b) the administration of a trust; or
 - (c) the construction of a written instrument.
- (2) The Court may appoint a person to represent the interests of a class of persons in the action if—
 - (a) the class cannot be readily ascertained; or
 - (b) the class can be ascertained but its members, or some of its members, cannot be found; or
 - (c) the appointment should be made in order to minimise costs.
- (3) A person appointed under subrule (2) becomes a party to the action.

Division 4—Special rules for businesses, partnerships and unincorporated associations

85—Use of business name

- (1) A person who carries on business in a business name may sue and be sued in that name.
- (2) A person who sues in a business name must endorse on the originating process the name and address of the person carrying on that business.
- (3) A person who is sued in a business name must, on taking its first step in the action, file in the court a notice setting out the name and address of the person carrying on business under that name at the time the cause of action is alleged to have arisen.

86—Use of partnership name

- (1) A partnership may sue or be sued in the partnership name.
- (2) A partnership that sues in the partnership name must endorse on the originating process the names and addresses of the partners at the time the cause of action is alleged to have arisen.
- (3) A partnership that is sued in the partnership name must, on taking its first step in the action, file in the Court a notice setting out the names and addresses of the partners at the time the cause of action is alleged to have arisen.
- (4) The Court may, on application by a person claiming not to be liable to the plaintiff's action as a member of a partnership—
 - (a) if the Court upholds the claim—order that the applicant is no longer to be regarded as a party to the action; or
 - (b) order that the question of the applicant's liability to the action be reserved until the hearing of the action,

and give any directions that may be appropriate in the circumstances.

87—Unincorporated associations

- (1) An unincorporated association may bring or defend an action in the name of the association.
- (2) An unincorporated association that brings an action in the name of the association must file in the Court with the originating process a list of the members of the association at the time the cause of action is alleged to have arisen.
- (3) An unincorporated association that defends an action in the name of the association must, on taking its first step in the action, file in the Court a list setting out the names and addresses of the persons who were members of the association at the time the cause of action is alleged to have arisen.

88—Actions by and against partnerships and other unincorporated associations

- (1) A person may bring an action against a partnership or an unincorporated association even though the person is, or was at a material time, a member of the partnership or association.
- (2) A partnership or unincorporated association may bring an action against a person even though the person is, or was at a material time, a member of the partnership or association.

Division 5—Non-party intervention

89—Non-party intervention

- (1) The Court may, on application by a person who wants to intervene in an action, permit intervention on conditions determined by the Court.
- (2) An application for permission to intervene must be supported by an affidavit stating—
 - (a) the nature of the applicant's interest in the action (which need not be a legal or equitable interest); and
 - (b) the applicant's object in seeking permission for intervention; and
 - (c) the extent of the proposed intervention.
- (3) A copy of the application and the supporting affidavit must be served on all parties to the action.
- (4) The Court may permit intervention on conditions it considers appropriate.
- (5) The Court may, on application or on its own initiative, vary or revoke an order allowing non-party intervention under this rule.

Dispute Resolution

Supreme Courts Act 1935 (SA)

65—Mediation and conciliation

(1) Subject to and in accordance with the rules of court, the court constituted of a judge or master may, with or without the consent of the parties, or the registrar may, with the consent of the parties, appoint a mediator and refer a civil proceeding or any issues arising in a civil proceeding for mediation by the mediator.

(2) A mediator appointed under this section has the privileges and immunities of a judge and such of the powers of the court as the court may delegate.

(3) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(4) The court may itself endeavour to achieve a negotiated settlement of a civil proceeding or resolution of any issues arising in a civil proceeding.

(5) A judge or master who attempts to settle a proceeding or to resolve any issues arising in a proceeding is not disqualified from taking further part in the proceeding but will be so disqualified if he or she is appointed as a mediator in relation to the proceeding.

(6) Evidence of anything said or done in an attempt to settle a proceeding by mediation under this section is not subsequently admissible in the proceeding or in related proceedings.

(7) If a case is settled under this section, the terms of the settlement may be embodied in a judgment.

66—Trial of issues by arbitrator

(1) The court may refer a civil proceeding or any issues arising in a civil proceeding for trial by an arbitrator.

(2) The arbitrator may be appointed either by the parties to the proceeding or by the court.

(3) The arbitrator becomes for the purposes of the reference an officer of the court and may exercise such of the powers of the court as the court delegates to the arbitrator.

(4) The court will, unless good reason is shown to the contrary, adopt the award of the arbitrator as its judgment on the action or issues referred.

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the court may direct, but the court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

67—Expert reports

(1) The court may refer any question arising in a civil proceeding for investigation and report by a referee who is an expert in the relevant field.