PART 34 Discontinuance

PART 34

Scope of this Part 34.1 - 34.2

34.1

The Rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.

34.2

A claimant who:

(1) claims more than one remedy; and

(2) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies;

is not treated as discontinuing all or part of a claim for the purposes of this Part.

Right to Discontinue Claim 34.3 - 34.5

34.3

A claimant may discontinue all or part of a claim at any time.

34.4

However:

(1) a claimant must obtain the permission of the Court if he wishes to discontinue all or part of a claim in relation to which:

(a) the Court has granted an interim injunction ; or

(b) any party has given an undertaking to the Court ;

(2) where the claimant has received an interim payment in relation to a claim, he may discontinue that claim only if:

(a) the defendant who made the interim payment consents in writing; or

(b) the Court gives permission;

(3) where there is more than one claimant , a claimant may not discontinue unless:

(a) every other claimant consents in writing; or

(b) the Court gives permission.

34.5

Where there is more than one defendant , the claimant may discontinue all or part of a claim against all or any of the defendants .

Procedure for Discontinuing 34.6 - 34.9

34.6

To discontinue a claim or part of a claim, a claimant must:

(1) file a notice of discontinuance; and

(2) serve a copy of it on every other party to the proceedings.

34.7

The claimant must state in the notice of discontinuance which he files that he has served a notice of discontinuance on every other party to the proceedings.

34.8

Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.

34.9

Where there is more than one defendant , the notice of discontinuance must specify against which defendants the claim is discontinued.

Right to apply to have notice of discontinuance set aside 34.10 - 34.34.11

34.10

Where the claimant discontinues under Rule 34.3, the defendant may apply to have the notice of discontinuance set aside .

34.11

The defendant may not make an application under Rule 34.10 more than 28 days after the date when the notice of discontinuance was served on him.

When discontinuance takes effect where permission of the Court is not needed 34.12 - 34.14

34.12

Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under Rule 34.6.

34.13

Subject to Rules 34.10 and 34.11, the proceedings are brought to an end as against him on that date.

34.14

This does not affect proceedings to deal with any question of costs.

Liability for Costs 34.15

34.15

Unless the Court orders otherwise, a claimant who discontinues a claim is liable for the defendant's costs incurred up to and on the date on which notice of the discontinuance was served on him or his legal representative. If proceedings are only partly discontinued:

(1) the claimant is liable for costs relating only to the part of the proceedings which he is discontinuing; and

(2) unless the Court orders otherwise, the costs which the claimant is liable to pay must not be

assessed until the conclusion of the rest of the proceedings.

Discontinuance and subsequent proceedings 34.16

34.16

A claimant who discontinues a claim needs the permission of the Court to make another claim against the same defendant if:

(1) he discontinued the claim after the defendant filed a defence; and

(2) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

Stay of remainder of partly discontinued proceedings where Costs not paid 34.17 - 34.18

34.17

Rule 34.18 applies where:

(1) proceedings are partly discontinued;

(2) a claimant is liable to pay costs under Rule 34.15; and

(3) the claimant fails to pay those costs within 14 days of:

(a) the date on which the parties agreed the sum payable by the claimant ; or

(b) the date on which the Court ordered the costs to be paid.

34.18

Where this Rule applies, the Court may stay the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under Rule 34.15.