



Transcript of Proceedings

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State Reporting Bureau
Date: 4 December, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 543 of 2003

DAVID ALLAN RUDDLE

Applicant

and

BARTLETT ENGINEERING PTY LTD
ACN 074 324 637

Respondent

CAIRNS

..DATE 01/12/2003

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application by David Ruddle who suffered injuries whilst using an elevating crane (cherry picker) on the 3rd of September 2000. He has already commenced a claim against his employer and Work Cover, but brings a claim against the present respondent, the supplier or manufacturer of the cherry picker.

The respondent, though served with this application, does not appear to contest the application. See the affidavit of Sandra Ah Shay, filed by leave on 1st December 2003.

The material filed on behalf of the applicant discloses that on the 12th of December 2002 a notice of claim was issued against Bartlett Engineering as respondent. There was no response to that notice of claim. There is no entity, Bartlett Engineering.

This made necessary the service on the correct respondent, Bartlett Engineering Pty Ltd of the notice of claim. This was done on the 1st or 2nd of September 2003 which meant that it was inside the period of limitation. This may not matter in any event as the applicant may proceed with leave if his claim falls within the terms of section 77D of the Personal Injuries Proceedings Act 2002 (PIPA).

There has been no response either to the filing of the notice of claim delivered on Bartlett Engineering Pty Ltd. As a consequence, and by virtue of section 13 of PIPA the

requirements for the giving the notice of claim are
"conclusively presumed to be satisfied."

The fact that the limitation period has passed does not prevent the commencement of proceedings so long as they are commenced if not more than six months has elapsed after the delivery of the complying notice of claim and it is not later than the 18th of December 2003. This latter date, of course, gives some sense of urgency to the application, but in any event it is within six months of the delivery of the notice of claim which occurred at the latest on the 2nd of September 2003.

In those circumstances it seems appropriate that leave should be given for the commencement of the proceedings to stop the conditions which attach to it the usual ones about the proceedings being stayed until there is compliance with part 1 of chapter 2 of PIPA.

I therefore make orders in terms of the draft initialled by me and placed with the papers.
