



## Transcript of Proceedings

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State Reporting Bureau  
Date: 23 March, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 95 of 2002

TRISTIN GOLDING

Plaintiff

and

TOWNSVILLE CITY COUNCIL

Defendant

CAIRNS

..DATE 22/03/2004

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 the plaintiff for the joinder of two further parties to the action, those parties being Telstra Corporation Limited and Pelmor Boring Pty Ltd.

The plaintiff instituted a claim for damages on the 14th of June 2002. By the statement of claim filed on that day the plaintiff alleges that on the 21st of March 2001 whilst she was walking along the footpath near the corner of Stanley and Sturt Streets, Townsville, she fell and suffered injuries.

She alleges that the cause of her fall was the uneven surface in the pavers which constituted the surface of the footpath. She sued the Townsville City Council as the authority responsible for the footpath. Inquiries made on behalf of the plaintiff since that time have established that work was undertaken on the footpath by employees of the Telstra Corporation and/or by employees of company Pelmor Boring Pty Ltd.

The question then of who was responsible for the pavers on the footpath, having the shape which they did, therefore is somewhat in doubt. The solicitors for the plaintiff as long ago as December in 2002 sought the attitude of Telstra Corporation Ltd and Pelmor Boring Pty Ltd as to their joinder in the action. There has been no response of behalf of those persons.

This application comes before me today on the last day on which the action can be commenced to be within the limitation

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period against those organisations if they are to be joined as defendants. The application is made on an ex parte basis and although informal notice has been given to each of these companies they have not been served in accordance with the rules or given time to respond.

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Consequently, I need to give leave to the plaintiff to proceed with the application and I do that but with some protection for the rights of those two corporations to be heard. I have not, in the time available, been able to satisfy myself as to whether there has been compliance with the statutory requirements under the Personal Injury Proceedings Act and nor would I be in a position to do that without hearing from those persons.

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However, given the fact that if the parties are to be joined within the period of limitations that must happen today, I therefore give leave to the applicant to proceed notwithstanding that the application has not been served on the present defendant. That leave is granted pursuant to rule 70(2) of the Uniform Civil Procedure Rules.

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However, in so doing, I will order that upon the joinder of the two corporations the matter will be returned to me for a hearing as to whether any objection is to be made to the order and thereby giving the opportunity to those corporations to have my order set aside.

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I make the following orders:

(1) That the applicant be permitted to proceed with this application notwithstanding that it has not been served on Telstra Corporation Limited and Pelmor Boring Pty Ltd.

(2) To the extent that it may be necessary, the applicant is given leave pursuant to section 43 of the Personal Injury Proceedings Act to join Telstra Corporation Limited and Pelmor Boring Pty Ltd despite non-compliance with part 1 of chapter 2 of the Act. Such leave is given subject to the further consideration referred to in order 5 hereof.

(3) I order that Telstra Corporation Limited be joined as the second defendant herein.

(4) I order that Pelmor Boring Pty Ltd be joined as third defendant herein.

(5) I adjourn the consideration of whether compliance with the Personal Injury Proceedings Act is necessary, and if so, whether it has been effected, to the 27th of April 2004.

(6) I adjourn the further hearing of this application to that date.

(7) I order that the costs of and incidental to this application be reserved.

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