



Transcript of Proceedings

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State Reporting Bureau
Date: 8 November, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 309 of 2004

JOHN O'DONOGHUE

Plaintiff

and

BRUCE ENGINEERING PURCHASING SERVICES PTY LTD
(ACN 008 052 220)

Defendant

CAIRNS

..DATE 29/10/2004

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: Take in my reasons. By his amended application the plaintiff seeks to join a new defendant out of time. Further to that it requires the Court's leave to proceed against the proposed new defendant because as of the 28th of October 2004, yesterday, that defendant company was placed in liquidation.

The application also seeks relief under the Personal Injuries Proceeding Act to proceed with the claim despite non-compliance with provisions of that Act.

The applicant was seriously injured on the 15th of July 2000 in the course of his employment which involved, at that time, the loading of pipes onto the back of a truck. One of the pipes gave way and struck the plaintiff because, he alleges, it was not adequately chocked with sandbags.

The allegation of negligence is made against a firm, M & M Carriers. The firm trading under that name was owned by Bruce Engineering Purchasing Services Pty Ltd, the present defendant in the action.

That defendant was chosen because of information which was gained on behalf of the plaintiff through an employee of M & M Carriers, a Mr Herridge, who advised that he was employed by that firm. The action proceeded on that basis without any demur from the defendant.

The action required leave pursuant to section 305 of the WorkCover Act, and also pursuant to section 43 of PIPA.

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By letter dated the 23rd of January 2004 the solicitors retained on behalf of the insurer of the defendant advised that the actual employer of Mr Herridge was not the defendant, but rather a company, Transport Service Pty Ltd. That company has the same directorate as the defendant company and appears to work in conjunction with the defendant company. The arrangement, which appears from the report of an insurance adjuster, Exhibit C to the affidavit of Mr Duffy filed on the 15th of October 2004, is that the respondent company is the owner of a fleet of vehicles, but the employer of the persons engaged to drive the vehicles is the proposed new defendant, Transport Services Pty Ltd. However there remains some confusion because the foreman, or person who gives instructions to the operators of the vehicles, could well be employed by the defendant.

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Whilst that confusion remains it is appropriate that Transport Services be joined as a defendant in that action. It is appropriate that that be done, notwithstanding the passing of the limitation periods because the plaintiff could not be expected to know of these internal operational arrangements that existed with the defendant company, the information to this effect only coming to the knowledge of the plaintiff from the defendant, as I said, by letter dated 23rd of January 2004.

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So it is in the interest of justice and to allow the determination of the proper entity bearing responsibility, that Transport Services Pty Ltd be joined as a defendant.

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That can only happen now, because of the liquidation of that company, if leave is granted pursuant to section 471B of the Corporations Act 2001.

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The defence of these proceedings, on behalf of the second defendant, appears to have been undertaken by the insurer behind that company.

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It is likely, in the circumstances which I have outlined, that there is an insurer similarly who would indemnify the liquidator of Transport Services Pty ltd. Whether this is so or not the circumstances are such that the company, notwithstanding its liquidation, should be joined. So I propose to grant leave pursuant to section 471B of the Corporations Act 2001.

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With the joinder of a new defendant leave is required pursuant to section 18 of the PIPA for the action to commence despite non-compliance with chapter 2, part 1 of that act. That leave ought, in the circumstances, to be given subject to the provisions that there be compliance before the action proceeds. That requirement is provided for in paragraph 4 by the order which I propose to make that there be no modification to the parties obligations under that chapter and part of PIPA.

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In those circumstances I will make an order that, firstly, that leave be given to commence proceedings against Transport Services Pty Ltd (in liquidation) and for it to be joined as a second defendant in the action.

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I give leave to amend the title of the action to identify Bruce Engineering Purchasing Services Pty Ltd as the first defendant in the action, otherwise I make orders in terms of draft initialled by me and placed with the papers.

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