



[2004] QSC 412

Transcript of Proceedings

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Date: 2 November, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 101 of 2001

Claim No 79 of 2000

TAMMY LEEANNE DUCKETT

Plaintiff

and

CHRISTOPHER EDWARDS

First Defendant

and

SEA SWIFT PTY LTD

Second Defendant

and

CHRISTOPHER DAVIS

Third Defendant

and

BRUCE DAVIS PTY LTD

Fourth 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: This is an application for the consolidation of two actions which were commenced in respect of the one incident. That incident was a collision between two marine vessels which occurred on the 20th of July 1998.

The plaintiff was employed to work on one of the vessels and was injured as a result of that collision. The plaintiff commenced action 79/2000 by filing a claim on the 19th of July 2000 so as to avoid any issue that might arise with the need for her claim to have been started within a two year limitation period.

No further steps have been taken with respect to that claim. What happened subsequently was that the plaintiff undertook the pre-filing procedures prescribed by the WorkCover legislation and that resulted in some delay and leave then being sought for the commencement of the proceeding 101/2001 on the 19th of July 2001. So it is seen immediately that each of these actions has been commenced on the eve of the expiration of the relevant period of limitation as it was understood to apply.

The granting of leave to commence the second claim was subject to a stay of proceedings to allow the pre-proceeding steps to be undertaken. There has been considerable delay in this because the plaintiff's injuries, which include psychiatric injuries, have not stabilised and therefore could not be reported upon by the psychiatrist in a timely way.

Nonetheless a section 293 conference was held on the 1st of
October 2004 and the matter is able now to proceed.

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The pleading of the plaintiff's claim in respect of the first
action is, to the extent that it goes, identical with the
relevant parts of the pleading in the second claim. The only
advantage of maintaining that first action is in the event
that defendants may raise a need for compliance with the two
year limitation period rather than a three year period.

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That being the case, the maintenance of the two actions causes
no inconvenience to this stage. The disputed issues will,
however, be most likely identified in the second claim in the
future.

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The first and second respondents are aware of the application
and have indicated by letter from their solicitors, Messrs
Templeton and Smith that they neither consent to nor oppose
the orders which the applicant seeks. That letter is dated
the 28th of October 2004 and appears as Exhibit MLG6 to the
affidavit of Megan Lesley Grainger filed herein by leave
today.

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The third respondent is the master of one of the vessels and
he appears today by his solicitors to indicate that whilst he
does not oppose the making of the order there may be questions
of insurance affecting his position so the attendance today by
the third defendant is in his personal capacity and not as
representing any insurer that might have a concern. The

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fourth defendant is represented by solicitors and makes no objection to the orders that are proposed.

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Given the circumstances which necessitated the commencement of the two actions it is clear that a consolidation of the two claims is called for and I will so order.

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The applicant also seeks leave to proceed pursuant to rule 389 of the Uniform Civil Procedure Rules because the plaintiff has not taken a step in the action in the past two years. In fact no step has been taken since the 19th of July 2001. The reason for that is, as I have outlined, the delays in the stabilising of the injury and the compliance with the pre-proceeding requirements of the WorkCover Act. None of the defendants object to the leave being granted, the delay having been explained in that way.

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HIS HONOUR: In those circumstances I will make orders in terms of the draft initialled by me and placed with the papers.

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