

SUPREME COURT OF QUEENSLAND

CITATION: *Webb v Sunshine Coast Hospital and Health Services* [2019] QSC 316

PARTIES: **BEVERLEY JUNE WEBB**
(plaintiff)
v
SUNSHINE COAST HOSPITAL AND HEALTH SERVICES
(defendant)

FILE NO/S: BS No 5796 of 2017

DIVISION: Trial Division

PROCEEDING: Interlocutory application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 December 2019

DELIVERED AT: Brisbane

HEARING DATE: 11 June 2019

JUDGE: Douglas J

ORDER:

1. **The application be dismissed.**
2. **The parties be heard as to costs.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – SUMMARY JUDGMENT FOR DEFENDANT OR RESPONDENT: STAY OR DISMISSAL OF PROCEEDINGS – where the plaintiff’s claim is for damages arising out of the termination of her employment as a pharmacist by the defendant – where the defendant brought an application for summary judgment – where the plaintiff alleges she was illegally suspended from her duties as a pharmacist contrary to s 137 of the *Public Service Act* 2008 (Qld) – where the plaintiff alleges her supervisor acted in bad faith and for an ulterior or collateral purpose in circumstances where he was subject to actual bias or a reasonable apprehension of bias against her – where the defendant complains that the plaintiff’s further amended statement of claim contains paragraphs that are “irrelevant narrative”, contain evidence, constitute a rolled up pleading or are not properly particularised – where the defendant complains that all but one of the general issues pleaded in the plaintiff’s further amended statement of claim had been dealt with in three decisions of the Queensland Civil and Administrative

Tribunal (“the QCAT decisions”) – where the QCAT decisions did not involve consideration of allegations of malice, bad faith or unconscionability in the plaintiff’s supervisor’s behaviour – whether, as a result of the QCAT decisions, any issue estoppel arises in respect of the claims advanced by the plaintiff for common law damages, equitable compensation or damages and for aggravated exemplary and/or punitive damages for, amongst other things, misfeasance in a public office – whether a determination as to the plaintiff’s prospects can be made in circumstances where: no cross-examination had occurred in respect of previously uncanvassed allegations of lack of good faith; and whatever cross-examination took place did so without the benefit of the disclosure obtainable in the Supreme Court – whether passages of the plaintiff’s further amended statement of claim ought to be struck out on the basis of the defendant’s complaints

Anti-Discrimination Act 1991

Personal Injuries Proceedings Act 2002

Public Service Act 2008 (Qld), ss 137, 189(1)

COUNSEL: K McMillan QC with S Monks for the applicant defendant
A Morris QC with V Brennan for the respondent plaintiff

SOLICITORS: Crown Law for the applicant defendant
Corney & Lind Lawyers for the respondent plaintiff

- [1] This is an application for summary judgment by a defendant. The plaintiff’s claim is for damages arising out of the termination of her employment as a pharmacist by the defendant.

The pleading

- [2] The further amended statement of claim, the subject of the applicant defendant’s attack, pleads in narrative form a complaint by the respondent to the Crime and Misconduct Commission (CMC) about bullying she said she had suffered at work and stress suffered as a consequence of an independent medical examination her superior, a Mr Hegarty, purportedly directed her to attend. That independent medical examination was said to have concluded that the plaintiff was fit to return to her employment but to have been followed by an illegal suspension of her from her duties contrary to s 137 of the *Public Service Act 2008 (Qld)*.
- [3] The illegality was said to be evident because the letter purporting to suspend the plaintiff arguably failed to state when the suspension ended by not nominating a date and saying that the suspension would continue effectively until her superior had considered the results of the independent medical examination.
- [4] The pleading then goes on, at para 35, to argue that the plaintiff’s superior, Mr Hegarty: acted in bad faith in suspending her effective 31 December 2012 and for an ulterior or collateral purpose; where he had not formed and could not form the beliefs required by s 137 of the

Public Service Act; and where he was subject to actual bias against the plaintiff or a reasonable apprehension of bias against her. The suspension was also said to constitute an improper exercise of power by him.

- [5] The direction to her to undergo the independent medical examination was also criticised as illegal when Mr Hegarty could not have formed a suspicion that the plaintiff was not performing her duties satisfactorily or that her absence was caused by mental or physical illness or disability. Accordingly, it was pleaded that Mr Hegarty's direction was made in bad faith on similar bases to the allegation to which I have just referred.
- [6] Similar attacks were made in respect of an "organisation wellness assessment" sought by the defendant in respect of the viability of returning the plaintiff to the team with which she worked, namely the pharmacy personnel employed by the defendant at Caloundra.
- [7] The assessment when made was said to have been highly positive with respect to the plaintiff but to have been relied on by the defendant to conclude that there were significant risks in returning her to work in that pharmacy team. The placing of any reliance on that assessment was said to be illogical and irrational which should have been apparent to Mr Hegarty.
- [8] The pleading then proceeds to relate steps taken by Mr Hegarty purportedly in reliance on the assessment to cancel the plaintiff's suspension under s 137(9) of the *Public Service Act* and replace it with a suspension under s 189(1) of that Act and to commence disciplinary action against the plaintiff which was challenged by her seeking a statutory order of review in this court.
- [9] The pleading then sets out an allegation that Mr Hegarty then advised the plaintiff to return to work and terminated disciplinary action against her.
- [10] That was followed by what is described as a further purported suspension pursuant to s 189(1) of the *Public Service Act* which was criticised on the basis that there were no reasonable grounds for Mr Hegarty to form a belief that the plaintiff was liable to discipline, so that it too was illegal. That decision by him was also criticised on the basis that it was made in bad faith, for an ulterior or collateral purpose and where he was subject to actual bias against the plaintiff constituting an improper exercise of power. That suspension, therefore, was also alleged to be unlawful and invalid and made in breach of the principles of natural justice.
- [11] Another letter by Mr Hegarty dated 21 January 2016 directing the plaintiff to return to work on 28 January 2016 was also described as a gross insult and an affront to the plaintiff because of its terms requiring her to work at the Nambour General Hospital subject to a rotating roster within that hospital. That was said to be deleterious to her health and wellbeing and also made in bad faith or for an ulterior or collateral purpose constituting an improper exercise of power.
- [12] That behaviour was said generally to have led to the plaintiff's resignation from her employment in circumstances characterised by the pleading as a constructive dismissal from which damages were claimed, including some damages that might be characterised as personal injuries such as "lost self-esteem ... suffered from feelings of anger and grief ...". Those heads of damages claimed were criticised as a claim for damages for personal injuries

where the procedures required by the *Personal Injuries Proceedings Act 2002* (Qld) had not been complied with.

Proceedings in QCAT

- [13] The basis for the defendant's claim for summary judgment is that all but one of the general issues pleaded in what is admittedly a complex further amended statement of claim, had been dealt with in three decisions of the Queensland Civil and Administrative Tribunal ("QCAT"); two by Members Browne and Endicott, and a third by Senior Member Stilgoe and Member Gardiner. The results of the decisions were against the claims made by the plaintiff. That was in circumstances, however, where the issue of malice or bad faith or unconscionability in Mr Hegarty's behaviour had not been raised and is raised here.
- [14] What was in issue in QCAT included, for example, whether there had been unlawful discrimination by the defendant against the plaintiff on the basis of an attribute, namely her mental health, by indirect discrimination of the kind proscribed by the *Anti-Discrimination Act 1991* (Qld).

Is there an issue estoppel?

- [15] Mr Morris QC argued, therefore, that there was no issue estoppel because all that was decided before QCAT was, for example, whether there had been unlawful discrimination constituted by indirect discrimination of the kind prohibited by that statute. He submitted that it was not necessary in those proceedings to show Mr Hegarty or anyone else was acting maliciously or in bad faith because the relevant section under the *Anti-Discrimination Act* was objective rather than subjective. Those submissions seem to me to be correct and to argue against any issue estoppel having arisen in respect of the claims for common law damages, equitable compensation or damages and for aggravated exemplary and/or punitive damages for, amongst other things, misfeasance in a public office, advanced in this pleading.

Is summary judgment warranted?

- [16] Mr Morris QC also argued against the alternative relief sought based on the argument that the plaintiff's prospects of success were poor by pointing out that there had been no cross-examination of Mr Hegarty before QCAT in respect of these allegations of lack of good faith. He also submitted that whatever cross-examination took place did so without the benefit of the disclosure obtainable in this court so that I could not determine at this stage what his client's prospects of success were. Again, that submission appears to me to be correct with the consequence that I should decide against the application bearing in mind the well-known limitations in respect of the grant of summary relief.

Should passages in the pleading be struck out?

- [17] There were also individual complaints made against particular paragraphs of the further amended statement of claim on bases such as that they were "irrelevant narrative", contained

evidence or constituted a rolled-up pleading. Some are also criticised as not being particularised properly.

- [18] Little attention was directed to those issues in the submissions made before me orally. It is true that the pleading has a narrative form to it but I am not persuaded that, for that or the other reasons argued, the relevant passages should be struck out. They seem to me to be relevant to the structure and conclusions expressed in the pleading. The defendant will also be in a situation to seek clarification of any allegations that it does find embarrassing or irrelevant by seeking further and better particulars. If there are claims properly characterised as claims for damages for personal injuries, that can also be clarified by seeking further and better particulars.

Order

- [19] Accordingly, therefore, the application is dismissed. I shall hear the parties as to costs.