

SUPREME COURT OF QUEENSLAND

CITATION: *Barr v Amalgamated Property Maintenance Pty Ltd* [2020] QSC 170

PARTIES: **LISA MAREE MCLAUGHLIN AS LITIGATION GUARDIAN FOR ANTHONY ROY BARR**
(applicant)
v
AMALGAMATED PROPERTY MAINTENANCE PTY LTD
ABN 62 093 139 514
(respondent)

FILE NO/S: BS No 4309 of 2019

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 12 June 2020

DELIVERED AT: Brisbane

HEARING DATE: 4 June 2020

JUDGE: Williams J

ORDER: **1. The plaintiff is not “a person under a legal disability” as defined in s 59(1A) of the *Public Trustee Act 1978* (Qld) so as to require a sanction of the settlement.**
2. The plaintiff does not have an impaired capacity regarding a financial matter relevant to receiving, investing and managing the settlement sum.
3. There be no order as to costs.

CATCHWORDS: HEALTH LAW – MENTAL HEALTH GENERALLY – GENERAL LAW AFFECTING PERSONS WITH MENTAL ILLNESS OR IMPAIRED CAPACITY – CONDUCTING LEGAL PROCEEDINGS – COMPROMISE – where the parties reached a settlement agreement – where the applicant suffered from PTSD, major depressive disorder and alcoholism – whether applicant is a “person under a legal disability” – whether the applicant has an impaired capacity regarding a “financial matter” or a “legal matter” as defined by the *Guardianship and Administration Act 2000* (Qld) – whether a compromise of action should be sanctioned under s 59 of the *Public Trustee*

Act 1978 (Qld)

Guardianship and Administration Act 2000 (Qld)

Public Trustee Act 1978 (Qld), s 59

Hewitt v Bayntun & Allianz Australia Insurance Ltd [2015]

QSC 250, followed

Morris v Clair [2004] QSC 127, followed

COUNSEL: DJ Murphy for the plaintiff/applicant

SOLICITORS: Sciaccas Lawyers for the plaintiff/applicant
Mullins Lawyers for the defendant/respondent

- [1] This is an application on behalf of the plaintiff, by his litigation guardian, for the following declarations and orders that:
- (a) the plaintiff is not “a person under a legal disability” as defined in s 59(1A) of the *Public Trustee Act 1978 (Qld)* (Public Trustee Act);
 - (b) the settlement of the plaintiff’s claim does not require a sanction of the Court or Public Trustee as prescribed by s 59(1) of the Public Trustee Act;
 - (c) the matter does not require referral to the Queensland Civil and Administrative Tribunal for consideration of the appointment of an administrator or guardian;
 - (d) the plaintiff does not have impaired capacity regarding a financial matter relevant to receiving, investing and managing the settlement sum; and
 - (e) there be no order as to costs.
- [2] In support of the application, the applicant relies on the following material:
- (a) Affidavit of Anthony Roy Barr sworn on 29 May 2020;
 - (b) Affidavit of Lisa Maree McLaughlin sworn on 29 May 2020;
 - (c) Affidavit of Conrad Jason Freeman sworn on 29 May 2020; and
 - (d) Affidavit of Conrad Jason Freeman sworn on 3 June 2020.
- [3] The affidavit of Conrad Jason Freeman sworn on 3 June 2020 exhibits at “CJF2” a number of medical reports as follows:
- (a) Dr Michael Hagan dated:
 - (i) 10 September 2015;
 - (ii) 29 September 2015;
 - (iii) 25 February 2016;
 - (iv) 1 March 2016;

- (v) 7 March 2016;
 - (vi) 24 May 2016;
 - (vii) 7 June 2016;
 - (viii) 8 June 2016.
- (b) Dr Luke O'Regan dated 17 May 2016.
 - (c) Dr Vladen Ljubisavljevic dated 7 September 2016.
 - (d) Medical Assessment Tribunal Decision – Psychiatric dated 1 February 2017.
 - (e) Dr Jill Harding-Clark dated 12 May 2017.
 - (f) Dr Andrew Byth dated 27 October 2017.
 - (g) Ms Debbie Anderson dated:
 - (i) 2 January 2018;
 - (ii) 4 February 2019;
 - (iii) 28 March 2020;
 - (iv) 28 May 2020.
 - (h) Professor Harvey Whiteford dated:
 - (i) 29 August 2018;
 - (ii) 7 December 2018.
 - (i) Dr Jonathan Douglas dated 27 November 2019.
 - (j) Discharge Summary of Royal Brisbane and Women's Hospital dated 24 December 2019.
- [4] The defendant appeared at the hearing of the application but made no submissions. The defendant's position is that it will abide by the order of the Court.¹

Background facts

- [5] The background facts are not contentious and can be briefly summarised as follows:
- (a) The plaintiff suffered a workplace injury on 13 March 2015 when employed as a painter by the defendant.
 - (b) The plaintiff suffered injuries when he fell three stories from a rooftop onto concrete ground below.
 - (c) The plaintiff suffered multiple injuries including:
 - (i) Fracture of his right first TNTJ of his foot;

¹ Affidavit of Conrad Jason Freeman of 29 May 2020, Annexure "CJF4(b)".

- (ii) Fracture of his right medial malleolus;
 - (iii) Fracture of his left patella;
 - (iv) Multiple extensive facial fractures;
 - (v) Fracture of left ribs;
 - (vi) Cervical spine injury;
 - (vii) Lumbar spine injury;
 - (viii) Disfigurement of his face and body;
 - (ix) A closed head injury;
 - (x) Dental injuries;
 - (xi) A psychiatric injury being either a Post-Traumatic Stress Disorder or Major Depressive Disorder.
- (d) On or about 19 October 2016, the plaintiff was involved in a motorcycle accident. The plaintiff also suffered a number of other falls post the workplace accident.

[6] Proceedings were commenced in the Supreme Court of Queensland on 24 April 2019 seeking damages for breach of contract and/or negligence, and interest.

[7] The matter proceeded to a mediation on 11 December 2019 conducted by the Honourable Duncan McMeekin QC.

[8] At the mediation, the plaintiff's claim was settled for the sum of \$700,000.00 clear of the WorkCover statutory refund of \$269,233.27, plus administration fees if so determined by the Court.

Statutory provisions – sanction and capacity

[9] The issue to be determined is whether the settlement of the personal injuries claim requires a sanction of the Court pursuant to s 59(1A) and (1) of the Public Trustee Act.

[10] Section 59(1A) and (1) of the Public Trustee Act provide as follows:

“(1A) In this section—

appropriate person, for a person under a legal disability, means—

- (a) an administrator for the person under the *Guardianship and Administration Act 2000*; or
- (b) if the person does not have an administrator—an attorney for a financial matter for the person under an enduring power of attorney under the *Powers of Attorney Act 1998*; or

- (c) if the person does not have an administrator or an attorney mentioned in paragraph (b)—the public trustee.

court means a court within whose jurisdiction an amount or damages are claimed by or for a person under a legal disability suing either alone or with others, and includes a judge or magistrate of the court.

person under a legal disability means—

- (a) a child; or
- (b) a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*.

taxing officer of a court means an officer of the court whose duties include the taxation or other assessment of costs in the court.

- (1) In any cause or matter in any court in which money or damages is or are claimed by or on behalf of a person under a legal disability suing either alone or in conjunction with other parties, no settlement or compromise or acceptance of money paid into court, whether before, at or after the trial, shall, as regards the claim of such person under a legal disability, be valid without the sanction of a court or the public trustee, and no money or damages recovered or awarded in any such cause or matter in respect of the claims of any such person under a legal disability, whether by verdict, settlement, compromise, payment into court or otherwise, before or at or after the trial, shall be paid to the next friend of the plaintiff or to the plaintiff's solicitor or to any person other than the public trustee unless the court otherwise directs.”

[11] Relevantly, the definition of “person under a legal disability” refers to the *Guardianship and Administration Act 2000* (Qld) (Guardianship and Administration Act). It is necessary to consider what is meant by “a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*”.

[12] Schedule 4 of the *Guardianship and Administration Act* is a dictionary which defines the relevant terms as follows:

“***capacity***, for a person for a matter, means the person is capable of—

- (a) understanding the nature and effect of decisions about the matter; and
- (b) freely and voluntarily making decisions about the matter; and

(c) communicating the decisions in some way.

...

impaired capacity, for a person for a matter, means the person does not have capacity for the matter.

...

matter includes a type of matter.”

[13] Schedule 2 outlines “types of matters”. Section 1 of Schedule 2 defines “financial matter” as follows:

“A ***financial matter***, for an adult, is a matter relating to the adult’s financial or property matters, including, for example, a matter relating to 1 or more of the following—

...

(o) a legal matter relating to the adult’s financial or property matters;

...”

[14] Section 18 of Schedule 2 defines a “legal matter” as follows:

“A ***legal matter***, for an adult, includes a matter relating to—

(a) use of legal services to obtain information about the adult’s legal rights; and

(b) use of legal services to undertake a transaction; and

(c) use of legal services to bring or defend a proceeding before a court, tribunal or other entity, including an application under the *Succession Act 1981*, part 4 or an application for compensation arising from a compulsory acquisition; and

(d) bringing or defending a proceeding, including settling a claim, whether before or after the start of a proceeding.”

[15] The interpretation and application of these definitions is also to occur in the context of the objectives and purpose of the Guardianship and Administration Act. Relevantly, these are outlined at ss 5 to 7:

“5 Acknowledgements

This Act acknowledges the following—

(a) an adult’s right to make decisions is fundamental to the adult’s inherent dignity;

(b) the right to make decisions includes the right to make decisions with which others may not agree;

- (c) the capacity of an adult with impaired capacity to make decisions may differ according to—
 - (i) the nature and extent of the impairment; and
 - (ii) the type of decision to be made, including, for example, the complexity of the decision to be made; and
 - (iii) the support available from members of the adult’s existing support network;
- (d) the right of an adult with impaired capacity to make decisions should be restricted, and interfered with, to the least possible extent;
- (e) an adult with impaired capacity has a right to adequate and appropriate support for decision-making.

6 Purpose to achieve balance

This Act seeks to strike an appropriate balance between—

- (a) the right of an adult with impaired capacity to the greatest possible degree of autonomy in decision-making; and
- (b) the adult’s right to adequate and appropriate support for decision-making.

7 Way purpose achieved

This Act—

- (a) provides that an adult is presumed to have capacity for a matter; and
- (b) together with the *Powers of Attorney Act 1998*, provides a comprehensive scheme to facilitate the exercise of power for financial matters and personal matters by or for an adult who needs, or may need, another person to exercise power for the adult; and
- (c) states principles to be observed by anyone performing a function or exercising a power under the scheme; and
- (d) encourages involvement in decision-making of the members of the adult’s existing support network; and
- (e) confers jurisdiction on the tribunal to administer particular aspects of the scheme; and

- (f) recognises the public trustee is available as a possible administrator for an adult with impaired capacity; and
- (g) provides for the appointment of the public advocate for systemic advocacy.”

Relevant authorities

- [16] Similar issues have previously been considered by the Supreme Court and provide assistance in relation to the correct approach in this case.
- [17] *Morris v Clair*² was an application to the Court for sanction of a compromise of a proceeding. The plaintiff had been injured in a motor vehicle accident and had brought proceedings for damages for personal injuries and loss of dependency. The proceedings were settled at a mediation on the basis that the second defendant pay a sum of money together with costs and that compromise was subject to the sanction of the Court.
- [18] In the accident, the plaintiff had sustained facial and dental injuries as well as seatbelt bruising and abrasions to her chest area. The plaintiff’s husband and infant son were killed in the accident. The medical reports showed a conflict as to whether she had sustained an organic brain injury. Further, the most significant injury was a severe adverse mental reaction to the deaths of her husband and son and the plaintiff developed a psychotic illness. In that case, the plaintiff swore an affidavit outlining the course of her illness since the accident, her present circumstances, her consultations with her legal representatives and her satisfaction with the compromise and the arrangements proposed for dealing with her financial affairs in the future.
- [19] In the year prior to the mediation, the plaintiff suffered a psychotic episode which necessitated a short period of hospitalisation. This was due to her being non-compliant with her medication and since that time, she had been compliant with her medication and not suffered any further psychotic episodes.
- [20] One of the psychiatric reports concluded “there is a definite probability that she will have future episodes of psychosis of indeterminate severity in duration. These episodes are likely to recur over a period of many years into the future.”
- [21] Wilson J summarised the plaintiff’s position in that case as follows at [10]:
- “In summary, the plaintiff has developed a psychotic illness as a result of the accident. It is episodic in nature. If she were floridly psychotic, she would probably be incapable of making decisions about her financial affairs. However, when she is well, she does not lack that capacity.”
- [22] Her Honour was asked to consider whether a sanction of the compromise was necessary. The compromise would not be valid unless sanctioned by the Court or

² [2004] QSC 127.

the Public Trustee if the plaintiff was “a person under a legal disability” within the meaning of s 59(1) of the Public Trustee Act.

- [23] Her Honour considered the definition of “a person under a legal disability” within the meaning of s 59(1) of the Public Trustee Act and also the provisions of the Guardianship and Administration Act dealing with the types of matters. In particular, the definition of “financial matter” in s 1 of Schedule 2 and the definition of “legal matter” in s 18 of Schedule 2. Her Honour concluded that the compromise of the proceeding was a “matter” within the meaning of the Guardianship and Administration Act and that the sanction of the Court was required if the plaintiff had “impaired capacity” for that matter.
- [24] Her Honour then considered the definitions of “impaired capacity” and “capacity” in Schedule 4 of the Guardianship and Administration Act. On the facts, her Honour concluded at [17] to [18]:

“On the evidence the plaintiff is presently capable of understanding the nature and effect of the compromise, freely and voluntarily making the decision to accept the compromise, and communicating that decision. She does not presently have impaired capacity for the ‘matter’ of compromising her legal proceeding. Accordingly, the sanction of the Court is not required.

If at some future time the plaintiff becomes incapable of managing her own financial affairs, consideration can then be given to making an appropriate application to the Guardianship and Administration Tribunal.”

- [25] The decision in *Morris v Clair* was considered in the more recent decision of McMeekin J in *Hewitt v Bayntun & Allianz Australia Insurance Ltd.*³ In that case, the plaintiff had suffered personal injury in a motor vehicle collision and the claim had been compromised. Two issues were before the Court:
- (a) Whether it was necessary that the compromise be sanctioned pursuant to s 59 of the Public Trustee Act; and
 - (b) Whether an administrator should be appointed.

- [26] In that case, the plaintiff applied for either a sanction of the settlement or, in the alternative, a declaration that the plaintiff was not a person under a legal disability so as to require a sanction and a declaration that the plaintiff did not have an impaired capacity regarding a financial matter relevant to receiving, investing and managing the settlement sum. Similar to the current application, his Honour noted at [5]:

“... the psychiatric evidence gathered in the course of preparation of the case has caused the solicitors on each side some concern and

³ [2015] QSC 250.

they have quite properly drawn the matter to the attention of the Court.”

[27] The circumstances of that case were described as follows at [7] to [11]:

“Mr Hewitt suffered severe physical injuries in the subject accident. He suffered no impairment to his intellectual capacities. There is no suggestion that his ability to give instructions or otherwise understand the proposed compromise is in any way impaired.

The perceived possible need to have the compromise sanctioned arises because of Mr Hewitt’s use of illicit substances at an earlier time in his life (cannabis at age 14, heroin by age 17, and amphetamine use prior to the subject accident in 2006) and a concern that he remains vulnerable to relapsing.

Mr Hewitt is presently on a methadone program and has been since 2008 for pain relief. He reports that he is not presently taking illicit substances and that he has not taken illicit substances for many years. The last record of such consumption was Dr Alcorn’s note of Mr Hewitt’s self-report on 6 November 2009 that he had been abstinent from injectable drugs for six months.

Both examining psychiatrists, Dr Mulholland and Dr Alcorn, have expressed concern at the prospect that Mr Hewitt be permitted control over a large sum of money.

Because of that concern the proceedings were brought in the name of a litigation guardian – Mr Hewitt’s mother.”

[28] His Honour identified the particular issue as follows at [13]:

“So the issue is whether a vulnerability that is presently not causing any impairment but which might well do so at some time in the future and which, if it becomes manifest, will more than likely result in a wasting of the substantial award, requires a sanction of the compromise or the appointment of an administrator.”

[29] McMeekin J considered relevant definitions under the Public Trustee Act and the Guardianship and Administration Act. His Honour concluded at [20]:

“Mr Hewitt understands the the [sic] nature and effect of the compromise – the decision about the matter; he has no present incapacity to freely and voluntarily make decisions about the matter; he has no difficulties in communicating his instructions. The definition of ‘impaired capacity’ is in the present tense, not the future tense. That Mr Hewitt might at some future time, and in the grip of an addiction, not understand the nature of what he is doing or not in any meaningful way be able to freely make decisions is irrelevant.”

- [30] In the circumstances, his Honour declined to sanction the settlement and stated it was a matter for Mr Hewitt whether he wished to enter into the compromise.
- [31] In relation to the second issue as to whether an administrator should be appointed, his Honour determined that it was not warranted in the circumstances being considered. His Honour stated at [28] to [30]:

“Where, as here, the taking or using of narcotic drugs is apparently six years in the past then it is difficult to see how the definition of *impaired capacity* is met. It is couched in the present tense and I think deliberately so. I am conscious of the general principles set out in Sch 1 of the *Guardianship and Administration Act* concerning self-reliance and a presumption of capacity. What exists here is a potential impairment not an actual one.

Margaret Wilson J did not make any order transferring the matter to QCAT in *Morris* (supra) observing that if the plaintiff there did suffer from a florid episode in the future an application could then be made.

With respect I think her Honour’s approach is right. That an impairment might, but not necessarily must, manifest itself in the future is not, I think, sufficient to justify the making of such an order.”

Evidence before the Court

- [32] In the application before me, Mr Barr swore an affidavit in support of the application. Mr Barr’s affidavit addresses his understanding of the compromise that has been reached, the steps he has taken in relation to his level of alcohol consumption, his ongoing treatment and his commitment to keeping his alcohol consumption “under control.”
- [33] Further, Mr Barr states:

“20. My alcohol consumption is definitely under control, particularly compared with what it was like before. I have made a promise to myself that, once this case is all over, I intend changing my life completely and starting over.

21. I am firmly of the view that I can manage my financial affairs.

22. My sister, Lisa McLaughlin, currently helps with my finances as she helps to pay my bills. I did have a computer prior to the accident but I turned it off because I had no need for it after the accident. Lisa pays my bills online but, once my case settles, I intend paying my bills myself. I am currently unable to drive, but I am hopeful that I will be able to get my driver’s licence back and I intend attending at the post office, which is where I used to pay all of my bills.

23. I am prepared to take advice in relation to managing my financial affairs, should I receive the bulk of the settlement moneys. I have accounts with the Commonwealth Bank and I intend speaking with someone at the bank and obtaining financial advice in relation to the best investment strategies relating to my settlement moneys.
24. If I do receive my settlement moneys, I intend getting my teeth fixed and then I will speak to the bank about how best to invest the balance of my money.”

[34] Ms Lisa McLaughlin, the plaintiff’s litigation guardian, has also provided an affidavit. The affidavit outlines the compromise of the claim and her previous concerns about her brother. Further, in the affidavit she states:

“5. The difference that I have observed in Anthony between then and now is very significant. He is now in a much better place. ... He is now proactive with his bills and accounting. I would say that he is aware of his bank account and, whilst he does not know his balance to the last cent, he is certainly aware of when it is running low. He is being very cautious.

6. He is a totally different person. ...”

[35] Ms McLaughlin concludes:

“10. I believe that if he remains on his good path and maintains his sobriety, then he will be quite capable of managing his own finances.

11. I am also optimistic that he might be able to return to some part time work in the future and that is something that he and I have discussed.”

Medical opinions and reports

[36] As is evident from the dates of the various medical reports, the plaintiff has been assessed at various times between March 2017 and May 2020. The progression of the medical reports shows that at various times, concerns have been identified in respect of the plaintiff’s capacity and the effects of his alcohol dependency.

[37] In a neuropsychological assessment report of the plaintiff dated 12 May 2017, Dr Jill Harding-Clark opined on a number of matters including:

(a) “Typically, the recovery trajectory for concussion is a positive one; however, Mr Barr’s cognitive recovery appears to have been confounded by significant psychiatric problems; namely, PTSD, Major Depressive Disorder and Alcohol Dependency, as diagnosed by his treating psychiatric specialist.”

(b) “Mr Barr’s cognitive picture may be further confounded by his numerous falls, along with his level of alcohol intake. It is possible that his cognitive

symptoms have been exacerbated by his motorcycle accident in October 2016... That said, Mr Barr reported no worsening of his cognitive symptoms since that accident.”

[38] In October 2017, Dr Andrew Byth, psychiatrist, identified that the plaintiff’s depressive symptoms were more severe than usually seen in an uncomplicated PTSD and an additional diagnosis of major depression was warranted, as well as diagnosis of substance abuse disorder, being alcoholism.

[39] Further, in relation to a potential cognitive impairment, Dr Byth stated in his report dated 27 October 2017:

“I note that he had a very brief period of posttraumatic amnesia, however his subsequent CT brain scan and MRI scan were normal. I thought he might have suffered mild concussion in the fall in 2015, probably without underlying brain damage, and he did not go on to develop Postconcussional Disorder. I thought his cognitive deficits after the fall could be explained in terms of his high anxiety and his psychomotor retardation from depression.”

[40] On 28 November 2017 Ms Debbie Anderson, clinical neuropsychologist, undertook neuropsychology testing of the plaintiff. On the basis of the neuropsychological testing and clinical assessment, Ms Anderson opined in her report dated 2 January 2018:

- (a) “There was no evidence of the significant impairment of a general intellect or general memory.”
- (b) “...although this is surprising given the nature of the injury, there is no clear evidence of a significant brain injury.”
- (c) “It is possible there was a mild injury or concussion but unfortunately these symptoms would have been overshadowed by the significant other aspects of his presentation. These have included ongoing pain and a tendency to ruminate about this, symptoms of post-traumatic stress disorder, as well as anxiety and significant depression and substance abuse.”
- (d) “He performed on the cognitive testing surprisingly well, with results generally in the average range. There was no clearly identifiable cognitive deficits that could be attributed to the effects of brain injury. The main difficulties appear to be associated with his concentration and keeping his mind on the task at hand.”

[41] In July and December 2018, Professor Whiteford provided further reports and opinions in relation to the plaintiff. In the 7 December 2018 report, Professor Whiteford stated:

- (a) “I do not believe that Mr Barr has capacity to make decisions regarding the settlement of his claim for compensation. His mental and substance abuse disorders, specifically the cognitive impairment sustained from his series of head injuries, impacts his judgment and decision making capabilities.”

- (b) If the plaintiff were to “receive a substantial award of damages I am of the opinion that he would not be able to manage these in a safe and appropriate manner. There is a high risk that he would use available financial assets to purchase and consume alcohol which would be markedly deleterious to his physical and mental health.”
- [42] Ms Debbie Anderson provided a further report on 4 February 2019 having considered the report of Professor Whiteford. Ms Anderson noted that the plaintiff’s substance use disorder was not well controlled and that when intoxicated, the plaintiff may not be able to make carefully considered decisions. While the plaintiff was able to demonstrate good cognitive skills, Ms Anderson recognised that when intoxicated he engaged in impulsive and dangerous behaviour and may be vulnerable to exploitation if he received access to a large sum of money. Ms Anderson concluded that “I do have concerns that ongoing substance abuse may impact on his decision making (for both legal and financial issues).”
- [43] Following the mediation of this matter, the plaintiff was admitted to the Royal Brisbane and Women’s Hospital HADS Unit for detoxification. This was an inpatient program for six nights and the plaintiff was discharged on 24 December 2019 with recommendations for ongoing support.
- [44] On 17 February 2020, Ms Anderson undertook new cognitive testing following the plaintiff undergoing the detoxification program. Ms Anderson’s updated opinion in her report dated 28 March 2020 included:
- (a) The plaintiff “did not present with a level of cognitive impairment that would be likely to impair his decision-making ability on either the financial or legal areas.”
- (b) “In my view, he would benefit from direction, advice and some type of overview in terms of managing his money, which it would appear he is willing to accept from his sister.”
- [45] Ms Anderson provided a final report on 28 May 2020 where she was asked to provide an opinion in relation to the plaintiff’s capacity to “give instructions to settle his claim” and “thereafter manage his settlement funds”. In her most recent report, Ms Anderson was of the opinion that:
- (a) The plaintiff is “able to understand (and remember) the nature and effect of decisions, engage in the decision making process without direction and communicate those directions.”
- (b) “Whilst it would be optimal for [the plaintiff] to obtain independent advice, he was able to demonstrate a satisfactory level of knowledge and understanding about the relevant matters during our discussion.”
- (c) “... there was no clear impediment to decision making” in relation to giving instructions to settle his claim and afterwards to manage his settlement funds.

Consideration

- [46] Consistent with the authorities and the relevant statutory definitions, the question to be determined by the Court is whether the plaintiff has the necessary capacity at the present time.
- [47] Historically, two issues of concern were identified: the plaintiff's alcohol dependency and whether he also suffered from a cognitive impairment. It is clear from the evidence that the plaintiff has previously had an alcohol dependence disorder. However, there is evidence that he has participated in an alcohol detoxification program and is receiving ongoing support. His current consumption of alcohol has been drastically reduced.
- [48] In respect of whether the plaintiff suffered from any cognitive impairments, there is evidence both ways on this issue. In April 2017 Dr Jill Harding-Clark identified cognitive impairments in memory, concentration and attention. However, this assessment was for the particular purpose of the WorkCover rehabilitation process. Dr Harding-Clark was not expressing an opinion about whether those cognitive impairments impaired the plaintiff's capacity for decision making of financial matters.
- [49] Professor Whiteford had the opinion, from a psychiatric perspective, that the plaintiff did have an impaired capacity because of his substance abuse and cognitive impairments. However, Professor Whiteford did not undertake his own cognitive testing but relied on the results of Dr Harding-Clark.
- [50] It is also noted that Dr Andrew Byth concluded, from a psychiatric perspective, that the plaintiff's cognitive defects could be explained in terms of "high anxiety and depression".
- [51] Ms Debbie Anderson, clinical neuropsychologist, twice performed her own cognitive testing on the plaintiff and also expressed an opinion specifically in relation to the capacity of the plaintiff for the types of "matters" that are being considered by the Court on this application.
- [52] Further, Ms Anderson evaluated the plaintiff on two occasions since he has undergone the detoxification program. These two evaluations are the closest to the present time and therefore the most relevant.
- [53] Based on the evidence before the Court, and in particular the 2020 evaluations of Ms Anderson and the affidavits of Mr Barr and Ms McLaughlin, I am satisfied that the plaintiff is presently capable of understanding the nature and effect of the compromise, freely and voluntarily making the decision to accept the compromise, and communicating that decision. The plaintiff does not presently have impaired capacity for the "matter" of compromising the legal proceeding. Accordingly, the plaintiff is not "a person under a legal disability" as defined in s 59(1A) of the Public Trustee Act so as to require a sanction of the settlement.
- [54] Further, on the balance of the evidence the plaintiff does not have an impaired capacity regarding a financial matter relevant to receiving, investing and managing

the settlement sum. In these circumstances, the compromise of the plaintiff's action does not require a referral to the Queensland Civil and Administrative Tribunal.

[55] The order of the Court is that:

1. I declare that the plaintiff is not "a person under a legal disability" as defined in s 59(1A) of the *Public Trustee Act 1978 (Qld)* so as to require a sanction of the settlement.
2. I declare that the plaintiff does not have an impaired capacity regarding a financial matter relevant to receiving, investing and managing the settlement sum.
3. There be no order as to costs.