SUPREME COURT OF QUEENSLAND

CITATION:	*Hardwick v Vanderfield Holdings P/L* [2003] QSC 468
PARTIES:	**ERIC RAYMOND HARDWICK** (applicant) v **VANDERFIELD HOLDINGS PTY LTD** (respondent)
FILE NO:	SC No 11513 of 2003
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	17 December 2003
DELIVERED AT:	Brisbane
HEARING DATE:	15 December 2003
JUDGE:	Douglas J
ORDER:	**Order that the applicant have leave to start proceedings against the respondent pursuant to s. 59(2)(b) of the *Personal Injuries Proceedings Act* 2002.** **Further order that any proceeding started pursuant to the previous order is stayed until the applicant complies with divisions 1 and 2 of chapter 2 part 1 of the *Personal Injuries Proceedings Act* 2002.**
CATCHWORDS:	LIMITATION OF ACTIONS – PERSONAL INJURIES – where application to commence proceedings pursuant to s 59 or alternatively s 77D *PIPA* – where complying notice of claim given more than six months before application to commence proceedings – whether applicant can be given leave under s 77D(2)(b) LIMITATION OF ACTIONS – PERSONAL INJURIES – where applicant alternately seeks to extend limitation period within which to commence proceedings pursuant to s 59 *PIPA* – whether application too late – whether any prejudice to respondents – whether court should grant application having regard to circumstances particularly where applicant's solicitors' delay explained by misinterpretation of *PIPA* *Personal Injuries Proceedings Act* (2002) Qld s 10, s 12, s 13, s 59, s 77D
COUNSEL:	K Jackson for the applicant

R Treston for the respondent

SOLICITORS: Shine Roche McGowan Solicitors for the applicant
Barry & Nilsson Lawyers for the respondent

[1] The applicant served a Form 1 notice under the *Personal Injuries Proceedings Act* (2002) ("*PIPA*") on three named respondents, Vanderfield Holdings Pty Ltd ("Vanderfield Holdings"), Vanderfield Pty Ltd and Vanderfield Machinery Qld Pty Ltd by registered posted delivered on 3 October 2002. Paragraphs 6, 7, 14, 15 and 16 of the form described the incident leading to the applicant's injuries including the place where it occurred and the person who caused it by reference to each of those three companies both cumulatively and alternatively. It was said to have occurred on 20 October 1999.

[2] The first response to the notice was an email dated 29 October 2002 from a David Brake, who described himself as "Liability Claims Officer CGU" and said he was writing on behalf of "the insured's broker". He asserted that the notice was incomplete in some respects and asked for a response "to the broker and to Vanderfield. The broker is forwarding the paperwork to the correct insurer. CGU has no further involvement in this matter."

[3] Even if Mr Brake could properly be regarded as having acted as the agent of Vanderfield Holdings, the respondent to this application, which is doubtful, considering his own assertion that CGU was not the correct insurer, the email cannot be described as a preliminary response of the type envisaged by s. 10 of *PIPA*. It neither gives notice under s. 12 of *PIPA*, nor advises of any further information needed to decide whether any of the three companies was a proper respondent to the claim nor gives reasons why Mr Brake considered any of the companies was not a proper respondent to the claim or information that may help the applicant to identify a proper respondent.

[4] In those circumstances I conclude that Vanderfield Holdings did not respond under s. 10 of *PIPA* within the month prescribed. The result is that it is conclusively presumed to be satisfied that the Form 1 was a complying part 1 notice of claim for the purposes of s. 13 of *PIPA* from the date it was served; *Kash v SM & TJ Cedergren Builders & Ors* [2003] QSC 426 (BS 8215/03; 15 December 2003) per McMurdo J at [7]–[11].

[5] That has the consequence of enlivening my discretion to allow the applicant to start a proceeding after the end of the normal period of limitation because the complying notice was served before the limitation period expired on 20 October 2002; see s. 59 of *PIPA* and *Kash* at [16]–[22].

[6] In this case the failure of the applicant to commence proceedings earlier, particularly by 18 June 2002 as envisaged by s. 77D of *PIPA*, is explained by her solicitors' mistaken understanding of that section. They believed she had until 18 December 2002 to commence proceedings; see paras 14-20 of the affidavit of Carolyn Howe filed 9 December 2003. In my view s. 77D in its current form is not capable of being interpreted in that manner. The alternative submissions made by Ms Jackson by for the applicant under that section do not persuade me that it can be used to benefit this applicant. Nevertheless, the evidence of the reasons for the applicant's solicitors' inaction and the lack of any evidence of prejudice to the

respondent persuade me that I should use my discretion to extend the period of limitation under s. 59(2)(b) to 18 December 2003; see *Kash* at [25] and *Abell v Roche Mining Pty Ltd* (S 536 of 2003; 25 November 2003 at p. 3 per Dutney J).

[7] It is also relevant to this exercise of my discretion that the applicant had entrusted the matter to her solicitors and their inaction caused by their misinterpretation of the legislation should not be visited on her; see *Perdis v Nominal Defendant* [2003] QCA 555 at [11].

[8] Accordingly I order that the applicant be granted leave to start proceedings against the respondent pursuant to s. 59(2)(b) of the *Personal Injuries Proceedings Act* 2002.

[9] I further order that any proceeding started pursuant to the previous order is stayed until the applicant complies with divisions 1 and 2 of Chapter 2 Part 1 of the *Personal Injuries Proceedings Act* 2002.

[10] I shall hear the parties as to costs.