

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

[2004] QSC 131

No 3044 of 2004

KURT RAYMOND ZANATTA

Applicant

and

NETPRO EMPLOYEES PTY LTD  
(ACN 074 257 891)  
FORMERLY GCR PTY LTD AS TRUSTEE FOR  
GCR UNIT TRUST TRADING AS NETPRO

First Respondent

and

WORKCOVER QLD

Second Respondent

and

KANGAROO ISLAND ABALONE PTY LTD  
(ACN 070 196 235)

Third Respondent

BRISBANE

..DATE 23/04/2004

ORDER

**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 a declaration that the Personal Injuries Proceedings Act 2002 does not apply to a proceeding brought by the applicant against Kangaroo Island Abalone Proprietary Limited ("the abalone company"). The application as filed originally sought other relief against two other respondents, but that part of the application is no longer live, the parties having reached agreement in relation to it and disposed of it by a consent order filed yesterday.

Although it is not altogether clear from the application that the declaration to which I have referred is sought to bind only the abalone company, I am informed by counsel that that is the intention and that any declaration which is framed as a result of the application can be so limited. Consequently, I have proceeded today on the basis that only the abalone company is a respondent to the application and have not had the other respondents called.

The applicant wishes to begin proceedings for personal injuries.

He was injured on 27 April 2001 whilst engaged in the course of his employment by the first respondent in work at Kangaroo Island, South Australia. The work involved the installation of shade netting over abalone tanks at an abalone farm. I assume, for the purposes of this application, that it took place above the high water mark.

The applicant claims that he was injured when he fell from a ladder as a result of its slipping or shifting and that this occurred as a result, among other things, of the negligence of the abalone company.

Unless s 77A of the PIPA applies, the period of three years permitted in Queensland for commencing proceedings for personal injuries has almost expired. The respondent is a South Australian company. The injury occurred and the tort was allegedly committed in South Australia. The applicant wishes to proceed against the abalone company if possible without jumping through the hoops prescribed by the Personal Injuries Proceedings Act.

It seems to me that the declaration ought to be granted. In my view, the relevant parts of the Act do not apply to proceedings of the sort contemplated by the applicant.

Section 7 of the PIPA provides:

"Provisions of this Act that provide for the kinds of damage and the amount of damages that may be recovered and the provisions of chapter 2, part 1, divisions 1,1A, 2 and 4, are provisions of substantive as opposed to procedural law."

Chapter 2 includes the hoops through which the applicant must jump if the Act applies. In the present case the tort was committed in South Australia. The decision in John Pfeffer Proprietary Limited v Rogerson (2000) 203 CLR 503 means that the substantive law to be applied is the law of South

Australia. That does not include the provisions set out in s 7.

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In the absence of some statutory indication that those provisions must be applied in all cases arising in Queensland Courts regardless of the substantive law of the case (compare *Kays Leasing Corp. Pty Ltd v Fletcher* (1964) 116 CLR 124), it must be concluded that they do not so apply. I need not consider whether such a provision could be validly enacted. No issue relating to the exercise of federal jurisdiction has been argued.

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Whether the rest of the PIPA applies may go back to the procedure-substance distinction but, as I understand the position, it is of no consequence to the applicant if the declaration is limited to those parts of the PIPA referred to in s 7.

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There will therefore be a declaration that, as between the applicant and Kangaroo Island Abalone Proprietary Limited, the provisions of the Personal Injuries Proceedings Act 2002 that provide for the kinds of damage and the amount of damages that may be recovered by a person, and the provisions of chapter 2 part 1, divisions 1, 1A, 2 and 4, do not apply to any proceeding brought by the applicant against the third respondent for damages for personal injuries arising out of the incident which occurred on 27 April 2001 at the third respondent's abalone farm at Kangaroo Island, South Australia.

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HIS HONOUR: There being no reason why the usual order should not be made, the third respondent is ordered to pay the costs of and incidental to the application to be assessed.

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