

# SUPREME COURT OF QUEENSLAND

CITATION: *Sheehy v Hobbs (No 2)* [2010] QSC 171

PARTIES: **CATRIONA MCGUINNESS SHEEHY**  
Applicant  
**And**  
**ANDREW COLIN HOBBS**  
First Respondent  
**JANINE MAREE HOBBS**  
Second Respondent

FILE NO/S: S93 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Rockhampton

DELIVERED ON: 21 May 2010

DELIVERED AT: Supreme Court Rockhampton

HEARING DATE: On the Papers

JUDGE: McMeekin J

ORDER: **Order that the applicant disclose to the respondents within 7 days hereof any information in the form of any photographs, sketches, or other written record of the state of the stairway brought into existence prior to 20 October 2009 relevant to the incident to which the claim relates provided by the engineer retained to examine the stairway, the state of which allegedly caused the fall that resulted in the subject injuries, whether as recorded by the engineer or by the applicant's then or present solicitors.**

CATCHWORDS: PERSONAL INJURIES – PRACTICE – DISCLOSURE – where applicant has remedied non-compliance with the *Personal Injuries Proceedings Act 2002 (Qld) (PIPA)* – where potential prejudice to the respondent is to be minimised – whether the applicant ought to disclose any information provided by the engineer retained to examine the subject stairway

*Personal Injuries Proceedings Act 2002 (Qld), s 22*

COUNSEL: A. Arnold for the applicant  
A.P.J. Collins for the respondents

SOLICITORS: Rees R & Sydney Jones for the applicant  
Carter Newell Lawyers for the respondents

- [1] **McMeekin J:** The applicant, Catriona Sheehy, seeks damages for personal injury arising, she claims, from the defendant's negligence. Her claim is governed by the provisions of the *Personal Injuries Proceedings Act 2002 (Qld) (PIPA)*. She failed to comply with those provisions and sought a declaration that she had remedied that non-compliance or, alternatively, authorisation that she be permitted to proceed despite non-compliance.
- [2] On 9 April 2010 I declared that the claimant had remedied non-compliance in her notice of claim and gave leave to the parties to make further submissions on the form of any further orders necessary within seven days. I was then concerned to minimise any prejudice to the respondents arising from my declaration.
- [3] The respondents have since submitted that the applicant ought disclose to the respondents any information provided by an engineer retained by the applicant to examine the stairway, the state of which allegedly caused the fall that resulted in the subject injuries, whether as recorded by the engineer or by her solicitors. The potential for prejudice arose because the carpet on the stairway at the time of the fall had been removed and replaced prior to notice of the claim being given on 20 October 2009. The respondents assumed from the material filed that the engineer retained saw the stairway with the original carpet in place.
- [4] The applicant opposes that order. It is contended that no inspection ever took place and that in any case the proposed order is too wide.
- [5] I, like the respondents' counsel, assumed that an inspection had taken place – the solicitor retained effectively discouraged the applicant proceeding with the claim following advice from the engineer. What that advice could be, and what basis existed for any advice, is difficult to imagine if there was no inspection.
- [6] In any case if there was no inspection then no harm can be caused to the applicant by making the orders sought – if the engineer did not go to the scene then he cannot be in possession of any information relevant to the case. It may be that information contained in any report or in the form of any photographs, sketches, or notes relevant to the incident would need to be disclosed in the pre-proceedings stage anyway: see s 22(1)(a)(i) of *PIPA*. Nonetheless, I would wish to remove any doubt, as best I can, about the obligation to ensure the minimisation of the potential prejudice to the respondent.
- [7] I order that the applicant disclose to the respondents within 7 days hereof any information in the form of any photographs, sketches, or other written record of the state of the stairway brought into existence prior to 20 October 2009 relevant to the incident to which the claim relates provided by the engineer retained to examine the stairway, the state of which allegedly caused the fall that resulted in the subject injuries, whether as recorded by the engineer or by the applicant's then or present solicitors.

- [8] The respondents contend that there should be no order as to costs of the application or that they be reserved. The applicant contends that she should have her costs as she succeeded in the application. The respondents point out that the precise application that eventually succeeded was only brought by amendment in the course of the argument and that the applicant required the declaration only by reason of her failure to comply with the litigation.
- [9] In my view the points raised by the respondents were not spurious, whether the respondents have been justly pursued for damages is yet to be shown, and the applicant required the declaration by reason of her failure to comply with the legislation. I propose to make no order as to the costs of the application.