

# SUPREME COURT OF QUEENSLAND

CITATION: *Sayers v Hanson t/as Alguard Security Services* [2011] QSC 70

PARTIES: **PETER ANTHONY SAYERS**  
(respondent/plaintiff)  
v  
**ALAN EDWARD HANSON trading as ALGUARD SECURITY SERVICES**  
(applicant/defendant)

FILE NO/S: SC No 11261 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 April 2011

DELIVERED AT: Brisbane

HEARING DATE: 30 March 2011

JUDGE: Chief Justice

ORDER: **1. That paras 5 – 7 of the amended statement of claim be struck out;**  
**2. That the plaintiff have leave to deliver a further amended statement of claim within 14 days; and**  
**3. That the costs of and incidental to the defendant's application filed 15 March 2011 be the defendant's costs in the proceeding.**

CATCHWORDS: WORKERS' COMPENSATION – PROCEEDINGS TO OBTAIN COMPENSATION – PRELIMINARY REQUIREMENTS – EFFECT OF INACCURACY, DELAY OR FAILURE TO GIVE NOTICE – GENERALLY – where plaintiff sues employer for damages for negligence and breach of contract – where security guard employee discovered deceased body and thereafter suffered psychiatric illness – where application for compensation to WorkCover Queensland and notice of claim for damages required by *Workers' Compensation and Rehabilitation Act 2003* state specific date and time of injury and that it did not occur over period of time – where pleadings allege subsequent harassment and intimidation by employer – whether subsequent alleged harassment should be considered a separate 'event' within the meaning of the statute – whether the failure to comply with pre-court statutory procedures in

relation to the alleged harassment excludes that from plaintiff's allowable claim for damages – whether paragraphs alleging employer harassment should be struck out

*Uniform Civil Procedure Rules 1999 (Qld)*, r 171  
*Workers Compensation and Rehabilitation Act 2003 (Qld)*, s 31(1), s 275, s 237(1)(a)(i), s 258(1)(b), s 295  
*Workers Compensation and Rehabilitation Regulation 2003 (Qld)*, s 111(1)(b)(i), s 111(1)(b)(ii)

*Castillon v P & O Ports Ltd* [2006] 2 Qd R 220; [2005] QCA 406, cited

*Phipps v Australian Leisure and Hospitality Group Ltd and Anor* [2007] 2 Qd R 555; [2007] QCA 130, considered

COUNSEL: G W Diehm SC for the applicant/defendant  
 L Willson for the respondent/plaintiff

SOLICITORS: Mullins Lawyers for the applicant/defendant  
 Parker Simmonds Lawyers for the respondent/plaintiff

- [1] **CHIEF JUSTICE:** The defendant seeks under Rule 171 of the *Uniform Civil Procedure Rules*, or the inherent jurisdiction of the court, an order striking out paras 5, 6 and 7 of the amended statement of claim.
- [2] The plaintiff sues for damages for negligence and breach of contract in respect of personal injuries and consequent loss sustained in the course of his employment by the defendant. Employed as a security guard, he discovered a body which had fallen from a high-rise building, and suffered a consequent psychiatric illness (para 4). In paras 5-7 of the pleading, he alleges that not having returned to work, he was subjected to harassment and intimidation by the defendant about when he would be returning to work. In para 8, the plaintiff attributes his psychiatric illness to both the discovery of the body (para 4), and the subsequent harassment and intimidation (paras 5-7). If paras 5, 6 and 7 are struck out, there will need to be minor amendment to para 8.
- [3] On 10 October 2007 the plaintiff lodged with WorkCover Queensland an application for compensation under the *Workers' Compensation and Rehabilitation Act 2003*. In that application he nominated 7 October 2007 at 2.55 am as the time his injury happened. Asked if the injury happened "over a period of time", he answered "no". Asked "how your injury happened", he said: "while on duty find (sic) body that fell off 27<sup>th</sup> floor I was traumatised." He received a notice of assessment dated 27 October 2009, specifying 7 October 2007 as the "date of injury". The plaintiff served a notice of claim for damages under s 275 of the Act on 3 December 2009. In that notice he again nominated 7 October 2007 at 2.55 am as the time of the "event", and described the "details of the event resulting in the injury", referring to discovery of the fallen body, but not to the subsequent alleged harassment.
- [4] In para 21 of the amended statement of claim, the plaintiff alleges that he had complied with the pre-court proceedings prescribed by the Act. In para 12 of the defence, the defendant contended that the plaintiff was entitled to pursue damages

only in respect of the injuries sustained on 7 October 2007. In para 9 of the reply, the plaintiff joined issue with that.

- [5] I am satisfied that if the claim based on the alleged harassment cannot succeed, paras 5-7 of the amended statement of claim should be struck out. That is because they would disclose no “reasonable” cause of action, or they would tend to delay the trial, or they would be unnecessary, in terms of Rule 171. Such allegations were not struck out in *Phipps v Australian Leisure and Hospitality Group Ltd and Anor* [2007] QCA 130 because the issue of a notice of assessment in that case, previously lacking, was imminent (para 21).
- [6] Under s 237(1)(a)(i), the plaintiff’s entitlement to seek damages depends on his having received a notice of assessment for “the injury”. The plaintiff received a notice of assessment for an injury specified, in that notice, as having occurred at 2.55 am on 7 October 2007. Now obviously that was the designation of the “event” (s 31(1)) which resulted in the injury, being the psychiatric illness. The challenged paragraphs of the amended statement of claim, alleging subsequent harassment, should be taken as alleging a further event or events which allegedly led to exacerbation of the originally sustained condition. The notice of assessment should be read as relating to the injury resulting from the event on 7 October 2007, not an injury resulting from the subsequent alleged harassment, while accepting that the injury suffered as a result of the event on 7 October 2007 persisted and perhaps developed over time after that date.
- [7] The plaintiff’s entitlement to seek damages is tied to “the injury” to which the notice of assessment relates (s 258(1)(b)). The precedent notice of claim for damages under s 275 must include particulars of the date and time of the relevant “event” and the circumstances surrounding that event (s 111(1)(b)(i) and (ii) *Workers’ Compensation and Rehabilitation Regulation* 2003). Unless a complying notice has previously been given, a claimant may not start a proceeding in the court (s 295). As mentioned, in his notice of claim for damages, the plaintiff (then claimant) referred only to the event which occurred on 7 October 2007, referring to the discovery of the fallen body, and not to the subsequent alleged harassment.
- [8] The combination of s 237(1)(a)(i), s 258(1)(b) and s 295 operates in the circumstances of this case to limit the plaintiff’s allowable claim for damages in court to any injury suffered consequent upon the discovery of the body on 7 October 2007, excluding any consequences of any subsequent alleged harassment, which would amount to a separate and distinct “event” or events.
- [9] I need to refer now to two matters raised in the affidavit material.
- [10] First, in her decision upon an application for review of WorkCover Queensland’s decision, at the instance of the defendant employer, the reviewing officer, upholding the insurer’s decision, referred, as if relevant, to an opinion of Dr Lotz describing, as “work-related stressors”, both the finding of the dead body and “apparent lack of compassion and empathy from [the plaintiff’s] employer”. That circumstance cannot however affect the operation of the statute in the circumstances of the case: it is that which limits what may be pursued in the court proceeding. Any view of the reviewer is irrelevant.

- [11] Second, the plaintiff's solicitor says in an affidavit that in his experience, when a notice of assessment specifies the date of injury, it is merely providing a "reference point for WorkCover", which is "not determinative of the actual date of injury when the injury occurs over a period of time".
- [12] Whatever the probative weight of that observation (and it was criticized), in this case the plaintiff expressly disavowed the injury's having occurred "over a period of time". I take that to mean that although he would presumably be asserting that the psychiatric injury persisted over a period of time and was perhaps not in its full extent instantaneous upon the occurrence of the event which led to it, the psychiatric condition for which he was claiming is to be taken to be the condition referable to the occurrence of that event on 7 October 2007, and not a condition attributable to, in the sense of exacerbated by, some quite separate and distinct subsequent occurrence, being, here, the alleged harassment and intimidation on the part of his employer. If the plaintiff were to be able to mount a claim in court for that, he must have complied with the pre-court statutory procedures in relation to that – which did not happen.
- [13] Ms Willson, appearing for the plaintiff, referred to *Castillon v P & O Ports Ltd* [2005] QCA 406 as diminishing any suggested significance of the date of injury specified in a notice of assessment. In this case, it is only the injury to which the notice of assessment relates for which a claimant may seek damages as plaintiff. This injury resulted from the event referred to in the application for compensation, being an injury consequent upon that event, although as I have said obviously persisting and perhaps developing in the ordinary course thereafter. But any exacerbation through the effect of subsequent "events", being the alleged harassment, could not be taken into account.
- [14] I consider that because the plaintiff's claim arising from paras 5-7 of the amended statement of claim cannot succeed, those paragraphs should be struck out.
- [15] I order that paras 5-7 of the amended statement of claim be struck out, that the plaintiff have leave to deliver a further amended statement of claim within 14 days, and that the costs of and incidental to the defendant's application filed 15 March 2011 be the defendant's costs in the proceeding. (I will receive submissions in writing should another order in relation to costs be sought.)