

SUPREME COURT OF QUEENSLAND

CITATION: *Arndt v Horwood & Anor (No 2)* [2012] QSC 137

PARTIES: **Melinda Peta ARNDT**
(Applicant)

-and-

Rachael Ann HORWOOD
(First Respondent)

-and-

SUNCORP METWAY INSURANCE LIMITED (ACN 075 695 966)

FILE NO/S: S365 of 2011

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 23 May 2012

DELIVERED AT: Townsville

HEARING DATE: Submissions in writing

JUDGE: North J

ORDER:

- 1. The limitation period in respect of an action for personal injury suffered by the applicant on 29 November 2007 be extended to 30 July 2012.**
- 2. That the second respondent pay the applicant's costs of and incidental to the application for an extension of the limitation period including the hearing on 18 November 2011 to be assessed on the scale of costs and charges applicable in the District Court.**

CATCHWORDS: COSTS

COUNSEL: M Pope of counsel for the Applicant
R D Green for the Respondents

SOLICITORS: Connolly Suthers Lawyers for the Applicant
Miller Harris Lawyers for the Respondents

- [1] On 18 April 2012 I delivered reasons concluding that the applicant was entitled to an extension of the limitation period and made orders requiring the parties to make submissions in writing concerning the terms of the order and on questions of costs.
- [2] The parties have made their submissions in writing as directed and these are the reasons for the orders I make.¹

Extension order

- [3] Though differing somewhat in how they arrived at the position both parties have concurred that the applicant was entitled, in light of my reasons, for an order extending time to a date one year after she became aware of the opinion of Dr Maguire, the orthopaedic specialist, whose opinion it was that the symptoms the applicant had recently suffered from were attributable to the 2007 motor vehicle accident.
- [4] The ascertainment of that precise date of his is somewhat uncertain. It is complicated because Dr Maguire gave two reports dated 20 July 2011.² The reason for this was that Dr Maguire, when he wrote the first report dated 20 July 2011, apparently misunderstood some of the facts and history of the applicant's injury and suffering with the result that it was necessary for the applicant's solicitors to write a letter to Dr Maguire on 27 July 2011 providing the doctor with a history consistent with the applicant's instructions,³ and it was in response to that letter of 27 July 2011 that Dr Maguire's second report dated 20 July 2011 was prepared.
- [5] In the circumstance that the first report dated 20 July 2011 prepared by Dr Maguire proceeded upon an inaccurate history (at least upon the applicant's instructions), it was in the circumstances reasonable for the applicant not to draw any conclusions from the opinion expressed by Dr Maguire in the first of the reports, but to wait until she was in receipt of the report expressing his opinion in light of the facts and circumstances as set out in the letter of 27 July 2011.
- [6] How long it took Dr Maguire to prepare and sign his second report after receiving the letter of 27 July 2011 and how long it took the report to find its way to the applicant and, to the extent to which it is relevant, for the applicant to obtain advice from her solicitor in light of the report, is a matter of speculation; it may have been a matter of a few days or a week. In the circumstances, I have concluded that it is reasonable to give the applicant an extension until 30 July 2012. This reflects, in my view, a reasonable estimate of the likelihood of the time it took Dr Maguire to consider the new information, issue the second report and for it to be received by the applicant and her solicitors for due consideration. Accordingly, there will be an order extending time to 30 July 2012.

Costs

- [7] The parties were in agreement that in general costs should follow the event. Ultimately, the applicant's counsel conceded that the submission by the

¹ Refer outline of submissions of counsel for the applicant dated 30 April 2012, outline of submissions by counsel on behalf of the second respondent dated 2 May 2012 and email by way of reply by counsel for the applicant dated 3 May 2012.

² See, for example, *Arndt v Horwood & Anor* [2012] QSC 104 at [9].

³ See, for example, *Arndt v Horwood & Anor* [2012] QSC 104 at [8].

respondents' counsel that costs should be ordered on the District Court scale was appropriate.

- [8] The respondents' counsel made some submissions in support of orders that the costs either be in the applicant's favour as the cause of the action to be commenced or that they be reserved to that proceeding. But these submissions were made in support of the submission that costs should be referable on the District Court scale and were designed to protect the respondents' position in the event that there was any uncertainty as to the appropriate scale that should apply. That submission effectively goes away in light of the concession by counsel for the applicant.
- [9] The application filed before me included claims for relief under the *Motor Accident Insurance Act 1994*. Those matters have not been heard or determined before me. As I understand it, the parties have either resolved the issues or resolved some of them and they are working their way towards a resolution of any outstanding matters. In his submissions, counsel for the respondents submitted that the orders I should make should be restricted to the costs associated with the application for the extension of time and there be a hearing before me for that order. I accept that the costs ordered in favour of the applicant should be limited to the costs associated with the contested application for an extension of time and the related hearing before me. I will make orders accordingly.