

# SUPREME COURT OF QUEENSLAND

CITATION: *Labaj v Collins* [2004] QCA 334

PARTIES: **JOHN LABAJ**  
(plaintiff/appellant)  
v  
**LES COLLINS**  
(defendant/respondent)

FILE NO/S: Appeal No 4034 of 2004  
DC No 225 of 2004

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 17 September 2004

DELIVERED AT: Brisbane

HEARING DATE: 7 September 2004

JUDGES: Williams JA and Cullinane and Holmes JJ  
Separate reasons for judgment for each member of the Court,  
each concurring as to the orders made

ORDERS: **1. Allow the appeal**  
**2. Set aside the judgment of the District Court and order that the application be dismissed with costs to be assessed**  
**3. Respondent is to pay the Appellant's costs of the appeal to be assessed**

CATCHWORDS: WORKERS' COMPENSATION – ALTERNATIVE RIGHTS AGAINST EMPLOYER AND THIRD PARTIES – ALTERNATIVE RIGHTS AGAINST EMPLOYER FOR DAMAGES AT COMMON LAW OR BY STATUTE – RIGHT TO PROCEED FOR DAMAGES – where appellant claims respondent negligently prepared report for Workcover Queensland – whether appellant is statute barred by s 523 *WorkCover Queensland Act 1996*  
  
*WorkCover Queensland Act 1996* (Qld), s 523  
*Workers' Compensation and Rehabilitation Act 2003* (Qld), s 576  
*Work Health Act* (NT), s 181

COUNSEL: B P Marais for the appellant  
M H Hindman for the respondent

SOLICITORS: The appellant appeared on his own behalf

## Wilson Ryan Grose Lawyers for the respondent

- [1] **WILLIAMS JA:** The background circumstances to this appeal are set out in the reasons for judgment of Cullinane J.
- [2] Though the statement of claim is badly drafted one can discern from it that the appellant alleges that the respondent owed him a duty of care with respect to the preparation of the report in question, and then it is alleged that she breached that duty. In other words the statement of claim contains at least an allegation that the respondent negligently prepared the report in question and in consequence the appellant suffered loss.
- [3] The first question is whether or not such a cause of action is barred by either s 523 of the *WorkCover Queensland Act 1996* or s 576 of the *Workers' Compensation and Rehabilitation Act 2003*. The sections are in identical terms, and like Cullinane J I will assume that the former is the applicable provision.
- [4] Prima facie the section is concerned with an action consequent upon the disclosure of information in the possession of WorkCover. Even construing the section liberally, and having regard to its perceived purpose, it cannot be construed, in my view, as providing absolute protection to a person, such as the respondent, engaged by WorkCover to prepare a report about a claimant.
- [5] It is instructive in my view to have regard for comparative purposes to provisions of Chapter 8 of the 1996 Act which deals with Enforcement. Section 458 provides that an "authorised person has the function of conducting investigations and inspections to monitor compliance with this Act." Then s 466(1) goes on to provide that an "authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act."
- [6] It would be surprising if an "authorised person" was only protected from liability where the Act in question was done "honestly and without negligence", whereas a person engaged, for example, to prepare a medical report about a claimant was absolutely protected regardless of whether that person acted dishonestly (in the sense of, for example, submitting a report without examining the claimant) or negligently.
- [7] In the course of argument the court was referred to comparable provisions in legislation in other States and Territories. Most of those provisions appear to relate more to the situation dealt with by s 466 of the 1996 Act. Only s 181 of the *Work Health Act (Northern Territory)* would appear to extend protection on a limited basis to a person in the position of the respondent here. That section is in the following terms:
- "No action or proceeding, civil or criminal, shall lie or be continued against the Authority or any other body, corporated or unincorporated, established by or under this Act, or a member, officer, employee or delegate of the Authority or such a body, for or in respect of an act or thing done in good faith by the Authority or that body, or by such member, officer, employee or delegate, in its or his or her capacity as such."

- [8] It follows that I agree with Cullinane J that the legislation does not afford protection to the respondent against a proceeding alleging negligent preparation of a report.
- [9] The next question is whether or not the general law recognises a cause of action against the respondent in the alleged circumstances. The contractual relationship was between the respondent and WorkCover, but the report, as was known to the respondent, was with respect to a claim made by the appellant. In those circumstances I would not be prepared to hold on a summary application that a duty relationship did not exist between the respondent and the appellant. Further, I would not be prepared to hold on a summary application that public policy would preclude the appellant recovering damages from the respondent if it was ultimately held that the report was prepared either not in good faith or negligently. Such questions should only be answered after a trial.

In the circumstances I agree with the orders proposed by Cullinane J.

- [10] **CULLINANE J:** This is an appeal by the appellant against an order of the District Court that summary judgment be entered in favour of the respondent in proceedings instituted by the appellant against the respondent.
- [11] The appellant made a claim for workers compensation to WorkCover Queensland in respect of what is described as psychiatric/psychological injuries said to arise out of his former employment with Lollo Plumbing Pty Ltd.
- [12] The respondent is a psychologist who was engaged by WorkCover in May 2003 to report to it in relation to the claim. The letter engaging her appears at page 50 of the record.
- [13] Although the pleading does not appear in the record it seems that the appellant had filed an earlier statement of claim which included a claim for damages for defamation. This was struck out and he was given leave to deliver a further statement of claim. The statement of claim which the appellant then delivered and which fell for consideration before the District Court does not comply with the Uniform Civil Procedure Rules as to pleadings. It largely consists of assertions and a prayer for relief. However to the extent that it does reveal a cause of action it is one based upon an alleged duty of care owed by the respondent to the appellant in the preparation of the report and a negligent breach of it resulting in mental stress, pain and suffering, loss and enjoyment of a personal relationship on one hand, and on the other the loss of or a reduced likelihood of success in the WorkCover claim.
- [14] Although the respondent sought to raise other issues the learned District Court judge on the application for judgment pursuant to Rule 293 of the Uniform Civil Procedure Rules confined his attention to the single issue whether the cause of action was barred because of the provisions of either s 523 of *WorkCover Queensland Act 1996* or s 576 of the *Workers' Compensation and Rehabilitation Act 2003*.
- [15] These provisions are effectively in the same terms. The *Workers' Compensation and Rehabilitation Act 2003* came into effect on 1 July 2003 taking the place of the *WorkCover Queensland Act 1996*. There are no relevant transitional provisions which affect the matter.

[16] The former provision was in effect when the report was prepared whilst the latter was in effect at the time the proceedings were instituted. Because each provision is effectively in the same terms it is unnecessary to consider whether the earlier provision applies because s 20 of the *Acts Interpretation Act* protects some accrued privilege or whether the later provision applies because it was the provision in force when the action was instituted. For convenience I will refer to s 576 of the *Workers' Compensation and Rehabilitation Act* in these reasons.

[17] Section 576 provides as follows:

**“576 Information not actionable**

- (1) This section applies to an action for defamation, or a proceeding for other redress, about the disclosure of information in the possession of the Authority or an insurer, or traceable to that possession.
- (2) Action can not be brought against the Authority or the insurer, or a person acting for any of them, by a person claiming to be aggrieved about the disclosure about a claimant's —
  - (a) physical or mental condition; or
  - (b) capacity or incapacity for work; or
  - (c) credibility.
- (3) Subsections (1) and (2) apply to information in the possession of a self-insurer only to the extent the information came in the self-insurer's possession under its powers and functions under s 92 or 92A<sup>252</sup> or because of a disclosure by an insurer under section 573(4).<sup>253</sup>
- (4) In this section —

“**claimant**” means a person for whose injury, or purported injury, compensation or damages is sought, is being paid or has been paid.

“**information**” includes opinion and comment.

252 Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

253 Section 573 (Disclosure of information)”

[18] This provision is one of five which appears in Part 1 of chapter 14 of the Act. The Part is headed “Information”.

[19] Section 572 confers on a claimant or worker a right to obtain documents that relate to that person's application for compensation or claim for damages subject to certain exceptions. Section 573 confers authority upon certain nominated bodies to provide information to the Authority or WorkCover, again subject to certain exceptions. Section 574 authorises the Commissioner of Police to provide information to the Authority or WorkCover including information as to a person's criminal history and similar information. Section 575 confers an immunity from criminal responsibility on a person who provides information in relation to an

application for compensation or claim for damages. This immunity, however, does not extend to information which is false and misleading.

- [20] We were referred to provisions in earlier legislation and also to provisions in legislation in other States and the Northern Territory. There is no provision elsewhere in comparable terms although there are provisions which generally protect from liability persons carrying out functions under similar legislation.
- [21] It is the appellant's case that s 576 does not have any application to a claim for damages for negligence of the kind advanced here. The appellant's claim is that in preparing the report the respondent having a duty of care to the appellant breached it in negligently preparing it such negligence being constituted by both act and omission on the part of the respondent.
- [22] It seems to me that by its terms s 576 is concerned with actions for defamation or other proceedings for redress arising from the disclosure of information in the possession of WorkCover. This accords in my view with the evident purpose of the immunity to be derived from the express terms of subsection 1 and the context in which the provision is located.
- [23] That is the section is concerned to protect from liability the authority and WorkCover and an insurer and persons acting on behalf of any of them from any liability for any loss or damage resulting from the disclosure of information in the possession of any such body whether such disclosure is directly from such possession or indirectly in the sense that the information disclosure of which is the subject of the claims originally came from such possession.
- [24] A claim for damages for negligence of the kind advanced here does not meet the language of the section. The respondent has prepared a report which was submitted to WorkCover and his loss is said to flow from the respondent's alleged negligence in the compilation and preparation of that report and from WorkCover acting upon it. No disclosure of information from the possession of WorkCover is relied upon in the cause of action advanced in the statement of claim.
- [25] In so far as the cause of action be identified as an action of this kind the section in my view does not preclude it. It may be that when the matter is properly pleaded it appears that the appellant does seek to raise claims prohibited by s 576. However this is not the case with the statement of claim as it presently stands.
- [26] The appellant was also inclined to contend that the respondent is not a person acting on behalf of WorkCover. I do not immediately see why the respondent does not come within such a description. However in view of what I have already said it is not necessary to express a concluded opinion on this issue.
- [27] The respondent raised an alternative argument that the judgment should stand on the basis that no cause of action could arise in the circumstances pleaded.
- [28] I do not think it can be said that this proposition is so clear as a matter of law that the action must necessarily fail. This area of the law of tortious responsibility is notoriously unsettled and it would not be appropriate to grant judgment against the defendant on this basis.

- [29] I would allow the appeal and set aside the judgment of the District Court and order that the application be dismissed with costs to be assessed.
- [30] I would order that the respondent pay the appellant's costs of the appeal to be assessed.
- [31] **HOLMES J:** I agree with the reasons of Williams JA and Cullinane J and with the orders they propose.