

**COURT OF APPEAL**

**SOFRONOFF P**

**Appeal No 5284 of 2019  
DC No 4779 of 2016**

**GILA GOLDA ROSILY**

**Applicant**

**v**

**WOOLWORTHS GROUP LIMITED  
ACN 000 014 675**

**Respondent**

**BRISBANE**

**TUESDAY, 20 AUGUST 2019**

**JUDGMENT**

**SOFRONOFF P:** On 30 December 2015, the applicant was in a Woolworths supermarket when she was bumped by a trolley, according to the claim that she filed and other documents. On 5 December 2016, the applicant filed a claim and a statement of claim. The statement of claim simply said:

- “1. Personal Injuries Proceedings Act (Qld) 2002.
2. Incident – Jimboomba – 27359 30 December 2015.  
The plaintiff claims the following relief: \$237,500.”

That pleading was filed with an affidavit that said:

“On the 30<sup>th</sup> December 2015 I was assaulted [*sic*] by a hit to my spine befront [*sic*] of the Woolworths staff member while conducting the conversation of the product in search at the Jimboomba store shopping

[sic] centre. I was left neglectfully [sic] so self emergency to my doctor whom came and treat me on the premises ambulance called to take me to hospital my son an [sic] Ilana girlfriend were called to assist. Staff member could have avoid this by directions to me instant pain to my back am on the treatment plan.”

On 8 September 2017, the defendant, who is the respondent to the present application, Woolworths, applied to have the claim and the statement of claim struck out because they failed to show a cause of action. Porter QC DCJ struck them out. The applicant was present at the hearing, as the transcript shows, which is before me. Porter QC DCJ granted the applicant leave to deliver an amended statement of claim within eight weeks, but the applicant did not do so.

On 29 November 2017, at another hearing, after hearing from the applicant and the respondent, the learned judge dismissed the applicant’s proceedings on Woolworths’ application and ordered that she pay the respondent’s costs. The applicant has now filed an application for an extension of time within which to appeal against those orders. The time for appealing expired in late December 2017. The applicant has neither explained her delay in filing her appeal, her delay in seeking an extension of time, nor has given any indication that her appeal would have any merit. The only ground that she puts forward for her application is that she was:

“...unable to be present at the proceedings of the Primary Court, as she was still in hospital as a result of the incident.”

That is not correct, because the transcript of the proceedings of 29 November 2017 shows that the applicant was present and took part fully in argument. As I have said, there has been no satisfactory explanation for the delay in appealing, and no merit has been shown in any proposed appeal. On the contrary, as I have said, the ground that the applicant raises in her application as the basis for her appeal is her absence when the judge made the orders. She also contends that the respondent’s solicitor undertook to represent her interest. That ground is patently without foundation, because, as I have already observed, she was present at the proceedings and took part in argument.

The learned judge rightly struck out the proceedings in the first instance having regard to the applicant's failure to file a new pleading within the time allowed, as well as the absence of any sign that she actually had a cause of action against the respondent. That dismissal was not on the merits, and so there is nothing to stop a proceeding being filed, although time limitations and the absence of any apparent merits may impinge upon that. In those circumstances, to seek an extension of time within which to appeal upon a patently false basis is vexatious, and, for that reason, the application for an extension of time should be struck out.

...

**SOFRONOFF P:** The orders of the Court are that the application of an extension of time to appeal is struck out. The applicant is to pay the respondent's costs of the application.

Adjourn till 10.15, please.