



## Transcript of Proceedings

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Date: 26 September, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

No S5872 of 2002

WORKCOVER QUEENSLAND

Plaintiff

and

THOMAS JOHN BARTLEY

Defendant

BRISBANE

..DATE 11/09/2003

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE CHIEF JUSTICE: The plaintiff seeks summary judgment on an amended statement of claim under Rule 292(2) of the Uniform Civil Procedure Rules.

The circumstances in brief are that a casual worker of the defendant's firm, who was an employee within the WorkCover Act, was injured at work and received compensation. When WorkCover looked at the matter, the defendant did not have a requisite insurance policy, contrary to section 52.

Accordingly, WorkCover is under section 61 entitled to recover the amount of compensation paid, together with a penalty equal to 50 per cent of the payment. That is what is sought here and I am satisfied that all the requisite elements of the claim have been established.

The point made by Mr Bartley here in person today is that he had tried to arrange cover. That may be, but the simple fact is it was not in place at the time of this accident. It is an absolute obligation under the WorkCover Act to have this insurance and it not being in place, WorkCover has its rights under section 61.

There was a defence filed in respect of the original statement of claim. There has been an amended statement of claim but no amended defence. The original defence is therefore taken to be the operative document. It does not raise serious matters of defence, in terms of the Rule matters which give rise to any real prospect of a successful defence. I queried a couple

of the points in it with Mr Grant-Taylor who appeared for WorkCover. A deficiency in the original statement of claim, for example, was that it was not alleged that the injured person was a worker employed by the defendant, but that was fixed up and has been established in the material before me.

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There is reference in paragraph 5(b)(v)(A) of the defence to section 280 of the WorkCover Act but that is irrelevant. There was a suggestion that the payments made might have been damages but that has clearly been put to rest. That was raised in paragraph 7(d)(ii) of the defence.

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I am satisfied that the requirements of Rule 292 have been satisfied. The amount of the judgment sought is \$305,650.63 plus half of that again under section 61(2)(b) producing \$458,475.94, together with interest under section 47 of the Supreme Court Act 1995 in an amount of \$55,393.94 being calculated at 10 per cent per annum over the period of 441 days between the date of commencement of the proceedings on the 27th of June 2002 and yesterday.

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There will be judgment for the plaintiff against the defendant for \$513,869.88. There will be an order that the defendant pay the plaintiff's costs of the proceedings to be assessed.

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