

SUPREME COURT OF QUEENSLAND

CITATION: *Oliver v Mulp Pty Ltd* [2009] QSC 340

PARTIES: **ALLAN GREGORY OLIVER**
(applicant)
v
**MULP PTY LTD (ACN 082 181 708) trading as ST
GEORGE HOTEL & MOTEL**
(respondent)

FILE NO/S: BS 10963 of 2009

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING
COURT: Supreme Court at Brisbane

DELIVERED ON: 5 November 2009

DELIVERED AT: Brisbane

HEARING DATE: 13 October 2009

JUDGE: Martin J

ORDER: **The court will hear the parties on an appropriate order.**

CATCHWORDS: PERSONAL INJURIES – PRACTICE – DISCLOSURE –
Where applicant injured in physical altercation outside a hotel
– Where applicant brought an action against the hotel under
PIPA – Where applicant sought information from the
respondent under PIPA provisions – Where respondent failed
to provide information – Whether information sought is
directly relevant to matters in issue in the applicant’s claim –
Whether the information sought directly concerns facts or
circumstances to which the occurrence of the incident may be
attributed – meaning of incident.

Personal Injuries Proceedings Act 2002, s 27

Haug v Jupiters Limited Trading [2008] 1 Qd R 276

COUNSEL: RC Morton for the respondent
V E Jenner (solicitor)

SOLICITORS: Shine Lawyers for the applicant
Moray & Agnew Solicitors for the respondent

[1] Allan Oliver (the applicant) seeks an order under s 35 of the *Personal Injuries Proceedings Act 2002* (“PIPA”) that Mulp Pty Ltd (the respondent) provide the information requested by him in a letter of 21 July 2009.

- [2] On about 10 December 2008 the applicant served a notice of claim, given pursuant to PIPA, on the respondent. It alleges that an incident occurred on 7 January 2006 and the following description is given:

“9. GIVE A BRIEF DESCRIPTION OF THE INCIDENT

The Claimant was a patron at the St George Hotel Motel ('the Hotel'). At approximately 12.30am he was involved in an altercation with another patron inside the Hotel. Shortly thereafter he was involved in a physical altercation with the same patron immediately outside the entrance to the Hotel and viciously assaulted in the course of the altercation.”

- [3] The following additional information was also given:

“17. DETAILS OF THE PERSON THAT CAUSED THE INCIDENT.

Surname/Family Name: *Mulp Pty Ltd trading as St George Hotel & Motel*

Given Name:

Home Address: *c/- Cranstoun & Hussein,
Level 2
102 Adelaide Street
Brisbane Postcode: 4000*

Contact Telephone Number: *Unknown*

18. DETAIL THE REASONS WHY THE INJURED PERSON BELIEVES THAT PERSON CAUSED THE INCIDENT

The reasons must particularly identify the step, process or act/s of the person that caused the incident and the link to the named respondent (if different to the person named in response to Q17):

- (i) *Failed to employ or retain an adequate number of security officers taking into account the size of the premises, the number of patrons likely to attend the premises and the history of physical altercations occurring at the Hotel,*
- (ii) *Failed to take any or any reasonable steps to ensure that the security officer employed by it was appropriately qualified, experienced and trained so as to provide security services of a professional and adequate standard,*
- (iii) *Failed to provide any or any adequate training or instruction to the security officer employed by it as to the provision and performance of security services at the Hotel,*
- (iv) *Failed to provide any or any adequate supervision, management or direction of the security officer in the provision and performance of security services at the Hotel,*
- (v) *Failed to evict the assailant who assaulted the Claimant from the Hotel prior to the assault,*

- (v)(sic) *Failed to direct the security officer employed by it to evict the assailant who assaulted the Claimant from the Hotel prior to the occurrence of the assault,*
- (vi) *Failed to take any or any reasonable steps to ensure that patrons involved in an altercation inside the Hotel were prevented from engaging in any further altercation on or about the Hotel premises;*
- (vii) *Failed to take any or any reasonable steps to prevent patrons at the Hotel from becoming involved in a physical altercation when it knew or ought to have known of the significant risk of such eventuating after an initial altercation between the patrons;*
- (viii) *Failed to devise, implement and maintain any or any adequate policies, guidelines, protocols or procedures pertaining to:*
 - (a) *the management and removal of intoxicated, aggressive and violent patrons from the Hotel,*
 - (b) *the management and prevention of aggressive behaviour and physical altercations at the Hotel, and*
 - (c) *the intervention in and resolution of physical altercations between patrons by the security officer.*
- (ix) *Permitted the assailant to further assault the Claimant when it knew or ought to have known of the significant risk of further assault following the initial altercation inside the Hotel,*
- (x) *Serving alcohol to patrons, and permitting those patrons to consume such alcohol at the Hotel, when it knew or ought to have known that such patrons were highly intoxicated,*
- (xi) *Failing to implement and maintain a policy for the responsible service of alcohol to patrons at the Hotel,*
- (xii) *In breach of section 148A of the Liquor Act 1992 failed to provide and maintain a safe environment in and around the Hotel,*
- (xiii) *In breach of section 156 of the Liquor Act 1992 supplied liquor to a person on the licensed premises who was unduly intoxicated and/or disorderly,*
- (xiv) *In breach of section 156 of the Liquor Act 1992 permitted liquor to be consumed on the licensed premises by a person who was unduly intoxicated and/or disorderly, and*
- (xv) *Failed to take any or any reasonable care for the safety of the Claimant.”*

[4] Section 27 of PIPA provides:

“27 Duty of respondent to give documents and information to claimant

- (1) A respondent must give a claimant—
 - (a) copies of the following in the respondent's possession that are directly relevant to a matter in issue in the claim—
 - (i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;
 - (ii) reports about the claimant's medical condition or prospects of rehabilitation;
 - (iii) reports about the claimant's cognitive, functional or vocational capacity; and
 - (b) if asked by the claimant—
 - (i) information that is in the respondent's possession about the circumstances of, or the reasons for, the incident; or
 - (ii) if the respondent is an insurer of a person for the claim, information that can be found out from the insured person for the claim, about the circumstances of, or the reasons for, the incident.
- (2) A respondent must—
 - (a) give the claimant the copies mentioned in subsection (1)(a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving a complying part 1 notice of claim and, to the extent any report or documentary material comes into the respondent's possession later, within 7 days after it comes into the respondent's possession; and
 - (b) respond to a request under subsection (1)(b) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it.
- (3) If the claimant requires information provided by a respondent under this section to be verified by statutory declaration, the respondent must verify the information by statutory declaration.
- (4) If a respondent fails, without proper reason, to comply fully with this section, the respondent is liable for costs to the claimant resulting from the failure.”

[5] On 21 July 2009 the following information was sought from the respondent pursuant to s 27(1)(b) of PIPA:

- “1. As at 6 January 2006, was William John Dale ("Date") an employee, servant or agent of the Respondent?
2. If the answer to the preceding question is yes, specify:
 - (a) the date upon which Dale's employment with the Respondent commenced;

- (b) the nature of the role performed by Dale in the course of his employment; and
 - (c) a description of Dale's duties in the said role.
- 2.(sic) If the answer to question 1 is no, specify:
 - (a) by whom and on what basis was Dale retained to provide services at the St George Hotel-Motel as at 6 January 2006;
 - (b) the date when he began providing services at the premises; and
 - (c) the nature and scope of the services that he was retained to provide.
- 3. As at 6 January 2006, was Dale a licensed security officer?
- 4. If the answer to the preceding question is yes, specify the date upon which Dale first became a licensed security officer.
- 5. As at 6 January 2006, did Dale hold any other qualifications relevant to the provision of security services or work as a security officer?
- 6. If the answer to the preceding question is yes, specify:
 - (a) the nature of the qualifications so held; and
 - (b) the date upon which he attained each such qualification.
- 7. Prior to 6 January 2006, had Dale undergone any training provided by someone other than the Respondent relevant to the provision of security services or work as a security officer?
- 8. If the answer to the preceding question is yes, specify:
 - (a) the nature of the training received by Dale; and
 - (b) the date upon which such training was received by Dale.
- 9. Prior to 6 January 2006, had the Respondent provided Dale with any training relevant to the provision of security services at the premises?
- 10. If the answer to the preceding question is yes, specify:
 - (a) the nature of the training provided to Dale; and
 - (b) the date upon which such training was provided to Dale.
- 11. Prior to 6 January 2006, had the Respondent provided Dale with any directions or instructions in relation to the provision of security services at the premises?
- 12. If the answer to the preceding question is yes, specify:
 - (a) the nature of the directions and/or instructions provided to Dale;
 - (b) the date upon which such directions and/or instructions were provided to Dale; and
 - (c) the name of the person or persons who provided such directions and/or instructions to Dale.

13. Prior to commencing work for the Respondent, did Dale have work experience relevant to the provision of security services or work as a security officer?
14. If the answer to the preceding question is yes, specify:
 - (a) the nature of Dale's experience; and
 - (b) the period over which such experience was attained by Dale.
15. On 6 January 2006 and 7 January 2006, did the Respondent provide Dale with any supervision in the performance of his duties as a security officer?
16. If the answer to the preceding question is yes, specify:
 - (a) the nature of the supervision provided to Dale; and
 - (b) the name of the person or persons who provided such supervision to Dale.
17. As at 6 January 2006, had the Respondent devised, implemented or maintained any policy, procedure, guidelines or protocols pertaining to:
 - (a) the management and eviction of intoxicated, aggressive or violent patrons from the Hotel;
 - (b) the management and prevention of aggressive behaviour and physical altercations at the Hotel; or
 - (c) the intervention in and management of physical altercations on or in the vicinity of the Hotel premises.
18. If the answer to the preceding question is yes, specify:
 - (a) the nature of the policies, procedures, guidelines or protocols devised, implemented and maintained by the Respondent; and
 - (b) the date upon which such policies, procedures, guidelines or protocols were first implemented.
19. As at 6 January 2006, had the Respondent devised, implemented or maintained any policy, procedure, guidelines or protocols pertaining to:
 - (a) the responsible service of alcohol to patrons at the Hotel;
 - (b) the point at which the Hotel declines to serve any further alcohol to a patron; or
 - (c) how to identify a highly intoxicated patron and the steps to be taken in relation to the patron upon he or she being identified as highly intoxicated.
20. If the answer to the preceding question is yes, specify:
 - (a) the nature of the policies, procedures, guidelines or protocols devised, implemented and maintained by the Respondent; and
 - (b) the date upon which such policies, procedures, guidelines or protocols were first implemented.
21. During the 12 months preceding the assault upon the Claimant had there been any incidents of physical

altercations occurring between patrons on or in the vicinity of the licensed premises?

22. If the answer to the preceding question yes, specify:
- (a) the date of each such incident; and
 - (b) the nature of each such incident.”

[6] The respondent did not supply any of the information sought.

[7] To determine the extent of the obligation cast upon a respondent in these circumstances, it will be of assistance to go first to the text of the Act and, in particular, the objects of PIPA. Section 4 relevantly provides:

- “(2) The main purpose is to be achieved generally by—
- (a) providing a procedure for the speedy resolution of claims for damages for personal injury to which this Act applies; and
 - (b) promoting settlement of claims at an early stage wherever possible; and
 - (c) ensuring that a person may not start a proceeding in a court based on a claim without being fully prepared for resolution of the claim by settlement or trial.”

[8] Section 21 of PIPA is in the same Division as s 27 and it provides:

“21 Purpose of div 2
The purpose of this division is to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim.”

[9] In *Haug v Jupiters Limited Trading* [2008] 1 Qd R 276 the Court of Appeal considered the provisions of s 27(1)(a) and s 27 (1)(b) of PIPA. The following principles may be drawn from that decision:

- (a) When s 27(1)(b)(i) of the Act requires a respondent to provide information ‘about the circumstances of, or the reasons for, the incident’ that must be a reference to the ‘incident’ described and particularised in the notice of claim.
- (b) Provisions such as s 27 should be given a broad, remedial construction; but that does not mean words of limitation found in the section can be ignored.
- (c) Unlike the duty of the claimant in s 22(b) of PIPA, the respondent’s obligation under s 27(1)(b)(i) to provide information to the claimant is not limited by the requirement that the information be “reasonably requested”.
- (d) The obligation in s 27(1)(b)(i) is much closer to that in s 45(1) of the *Motor Accident Insurance Act* which was considered by Ambrose J in *RACQ/GIO Insurance Ltd v Ogilvie* [2002] 1 Qd R 536. It would follow, then, that the “circumstances of ... the incident” would

include any fact to which the occurrence of the incident may be attributed.

[10] The word “incident” is defined in the Schedule to PIPA as:

“in relation to personal injury, means the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury.”

[11] The request for information made by the applicant was in a form very similar to that of interrogatories. The utility of interrogatories in traditional litigation was often reduced by the breadth of the objections able to be taken to them. It would be inconsistent with the objects of PIPA to approach a request for information which looks like a set of interrogatories as if it was subject to the same types of formal objections which led to the near stultification of interrogatories as a useful means of obtaining evidence.

[12] Nevertheless, any request for information must bear a relevant relationship with the “incident”. A claimant is not at large with respect to the information sought and must remain within the, admittedly broad, confines of “fact[s] to which the occurrence of the incident may be attributed”. Notwithstanding that, there are some curious aspects to the questions asked:

- (a) There are 16 questions asked about “William John Dale”, but nowhere in the Notice of Claim is he referred to, nor are any questions asked about whether Dale was at the hotel on the day in question. There is nothing in the description of the “incident” or in the further details in part 18 of the Notice of Claim to suggest that Dale was at the hotel, let alone that he was involved.
- (b) There are four questions which relate in whole or in part to intoxicated patrons but nowhere is it suggested that the person who allegedly assaulted the applicant was intoxicated.
- (c) The description of the “incident” in the notice distinguishes between the altercations – the second (outside the hotel) is described as physical, the first is not – yet there are questions about “violent patrons” and “physical altercations” on the Hotel premises.

[13] A question which arises at this stage of the consideration is whether the process provided for in s 27(1)(b) of PIPA is designed to draw out what a respondent knows about the incident or whether it is able to be used to interrogate a respondent in accordance with a construct of the incident which would favour the applicant. The process is also conditioned on the information sought “being in the respondent’s possession”. It does not extend to information which a respondent might be able to obtain through enquiry – unlike the provisions relating to insurers in s 27(1)(b)(ii).

[14] I return to the information sought in the applicant’s letter of 21 July 2009. Questions 1 to 16 all relate to the person named “Dale” but, as I have noted, there is no allegation that Dale had anything to do with the incident. These are questions of a general nature about Dale’s experience and background. I

accept that there are references to 6 January 2006 but they generally seek information about Dale's retainer or employment and his previous experience. Although there is no allegation that Dale was at the hotel on the relevant date or that he was, either by commission or omission, in some way involved in the incident, there are allegations about a security officer retained by the respondent. Some of the questions are based on assumptions which may or may not be substantiated by answers to earlier questions. It may be that some of the questions are misguided and they will not, because of the answers to earlier questions, be about matters that could be regarded as being "the circumstances of, or the reasons for, the accident". If that is the case, then it is open to the respondent to object to supplying the information but, at this stage, that cannot be determined.

- [15] Questions 17 and 18 concern matters which, so far as they refer to aggressive behaviour, can be regarded as facts to which the occurrence of the accident may be attributed. And to that extent those questions should be answered. Questions 19 and 20 concern policies about intoxicated patrons but there is no allegation in either part 9 or part 18 of the Notice of Claim that the assailant was intoxicated or had been served too much alcohol at the Hotel. Questions 21 and 22 are with respect to the period of 12 months preceding the assault and are questions about whether there have been incidents of physical altercations between patrons. I cannot see how they are facts to which the occurrence of the incident may be attributed. Many of those questions are nothing more than fishing expeditions.
- [16] I will make an order that the respondent answer certain of the questions in accordance with my reasons. At the conclusion of the hearing, Mr Morton asked to be heard on the form of any order that required questions to be answered. I will hear the parties on the appropriate order and on costs.