

SUPREME COURT OF QUEENSLAND

CITATION: *RSL (Queensland) War Veterans Homes Limited & Or v Palma* [2010] QSC 222

PARTIES: **RSL (QUEENSLAND) WAR VETERANS HOMES LIMITED**
(first applicant)
AGED CARE EMPLOYERS SELF INSURANCE
(second applicant)
v
PALMA, Colleen Anne
(respondent)

FILE NO/S: SC No 3329 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5 May 2010

DELIVERED AT: Brisbane

HEARING DATE: 5 May 2010

JUDGE: Margaret Wilson J

ORDER: **1. that the application be dismissed in so far as it seeks answers to questions;**
2. that there be no order as to costs.

CATCHWORDS: WORKERS' COMPENSATION – PROCEEDINGS TO OBTAIN COMPENSATION – PRELIMINARY REQUIREMENTS – NOTICE OF INJURY – GENERALLY – where respondent claims to have sustained physical and psychological injuries in the course of her employment at a nursing home when she was assaulted by a resident in September 2007 – where respondent has served a notice of claim for damages pursuant to the *Workers' Compensation and Rehabilitation Act 2003* (Qld) – where alleged injuries include post traumatic stress disorder and depression – where there is evidence of an incident of domestic violence in the weeks prior to September 2007 and that in consequence respondent attended a women's refuge – where pursuant to s 279 of the Act applicants seek orders that respondent provide an authority authorising them to obtain a complete copy of the records of the women's refuge in respect of her attendances upon it, and an order that she provide a declaration answering certain questions – where respondent

has agreed to provide an authority addressed to the women's refuge – where ss 279(1)(b)(ii) and 279(1)(b)(iv) of the Act require the respondent to give information reasonably requested by the applicants about the nature of the injury and of any impairment or financial loss resulting from it, and about her medical history as far as it is relevant to the claim – whether the information sought is information about the nature of the injury – whether the information sought is information about her medical history as far as it is relevant to the claim

Workers' Compensation and Rehabilitation Act 2003 (Qld), s 279(1)(b)(ii), s 279(1)(b)(iv)

COUNSEL: R Treston for the applicants.
G C O'Driscoll for the respondent.

SOLICITORS: Bruce Thomas Lawyers for the applicants.
Hall Payne for the respondent.

HER HONOUR: The respondent, Ms Palma, claims to have sustained physical and psychological injuries in the course of her employment at a nursing home when she was assaulted by a resident on 21 and 25 September 2007. She has served a notice of claim for damages pursuant to the Worker's Compensation and Rehabilitation Act 2003. Her alleged injuries include post traumatic stress disorder and depression.

There is evidence of an incident of domestic violence in the weeks prior to September 2007. In consequence of that incident, she attended a women's refuge on one occasion.

In this application, the applicants seek orders that the respondent provide an authority authorising them to obtain a complete copy of the records of the women's refuge in respect of her attendances upon it, and further, an order that she provide a declaration answering certain questions posed on 20 January 2010.

In so far as this is an application that the respondent provide an authority addressed to the women's refuge, she has now agreed to provide one for the period 21 September 2004 onwards. That is, as I understand it, satisfactory to the applicants.

That leaves the question of whether she should be required to answer the questions that were posed.

It is pertinent to set out those questions.

1. Each of the dates upon which she attended the refuge.

2. The reasons and purposes for her attendance on each occasion.
3. The assistance, support, counselling or treatment she received.
4. The names of all persons she consulted or was treated by.
5. The nature and extent of the service or treatment provided.
6. The effect of that service extent [sic] or treatment; and
7. What she advised persons at the refuge on each of the occasions she attended.

The application is made pursuant to section 279 of the legislation. That section imposes upon the respondent and the applicants a duty to co-operate in relation to the claim by the provision of relevant documents and information reasonably requested by each party about certain matters.

Of relevance to this application are paragraphs (ii) and (iv) of section 279(1)(b). They require the respondent to give information reasonably requested by the applicants about the nature of the injury and of any impairment or financial loss resulting from it and about her medical history as far as it is relevant to the claim.

I can dispose quickly of any suggestion that what is sought is information about the nature of the injury. As I interpret paragraph (ii), the injury referred to is that for which compensation is claimed - in the circumstances of this case, injury or injuries sustained when she was assaulted by the patient.

That leaves the question of whether the information sought is information about her medical history as far as it is relevant to the claim.

There are reports by Dr Todd and Professor Whiteford, both psychiatrists. From those reports I am satisfied that any history of domestic violence would be relevant to their assessment of psychological injury sustained when she was assaulted by the patient. But that is not sufficient to bring the subject matter of the questions within medical history within the meaning of (iv).

The women's refuge does not provide services by medical practitioners or qualified psychologists. It does not provide "medical treatment" within the meaning of the Act. In my view "medical history" refers to presentations for medical treatment and related purposes. I do not accept that it extends to presentations at the women's refuge. That there is a duty to co-operate (and one which has been described as a broad obligation) is not sufficient warrant for giving "medical history" a meaning which is not otherwise open on the legislation.

Similarly, that the women's refuge may refuse to provide records in the absence of a subpoena or other Court order is a matter of inconvenience to the applicants, but not a reason for giving "medical history" an otherwise unwarranted meaning.

In the circumstances I dismiss the application in so far as it seeks answers to the questions. I am prepared to make an order in terms of paragraph one of the draft which has been placed before me.

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HER HONOUR: In all of the circumstances I decline to make any order as to costs.
