

WALSH HALLIGAN DOUGLAS

CASE UPDATE - 1

WALSH HALLIGAN DOUGLAS
LAWYERS



Inside This Issue

- Quantum
- Liability
- Leave to proceed
- Extension of limitation

Supreme Court of Queensland Luck v Civil Mining & Constructions Pty Ltd [2009] QSC 413

The plaintiff claimed damages for personal injuries as a result of lifting a manhole cover. Liability was admitted.

The plaintiff contended that he suffered a traumatic exacerbation of lumbar spondylosis.

The medical evidence supported the plaintiff sustaining an aggravation of a pre-existing underlying thoraco-lumbar anomaly.

The plaintiff argued that the injuries had a significant impact on his earning capacity.

The Court found that the pre-existing condition rendered the plaintiff unsuitable for heavy manual labouring work.

Damages were assessed in the vicinity of \$118,000 including \$40,000 for past economic loss and \$35,000 for future loss of earning capacity.

District Court of New South Wales Gladanac v Wang [2009] NSWDC 234

The plaintiff, who was walking across a pedestrian crossing at the relevant time, claimed to have sustained personal injuries as a result of being struck by the defendant's vehicle.

The defendant denied liability arguing that the plaintiff was intoxicated by alcohol thereby causing the accident or alternatively, was guilty of substantial contributory negligence.

The plaintiff and defendant gave conflicting versions of what happened. Another driver at the scene witnessed the accident and also gave evidence.

The trial judge found that the consumption of alcohol did not cause or contribute to the accident and held that the defendant breached her duty as a driver.

Judgment was given in favour of the plaintiff in the vicinity of \$298,000.

High Court of Australia Adeels Palace Pty Ltd v Moubarak; Adeels Palace Pty Ltd v Bou Najem [2009] HCA 48

On 1 January 2003 the appellant was carrying on business as a restaurant. An altercation arose between patrons. After the altercation one of the persons involved left the restaurant and returned soon afterwards with a gun shooting the two respondents.

The respondents brought proceedings in the District Court of New South Wales against the appellant claiming damages for personal injury as a result of the appellant's negligence in not providing any or any sufficient security during the function on New Years Eve.

At first instance the respondents were successful. The appeal to the Court of Appeal of New South Wales was dismissed.

The appellant appealed to the High Court of Australia.

The issue was whether the appellant owed each respondent a duty of care to prevent harm of the kind suffered, whether that duty had been breached and whether the breach was a cause of the damage suffered.

The appellant submitted that it owed no duty to those attending its premises to prevent criminal conduct by third parties.

The Court concluded that the appellant owed each respondent a duty to take reasonable care to prevent injury from violent or disorderly conduct of other persons however the negligence found against the appellant was not shown to have been a cause of the injuries suffered by the respondents.

The High Court held that there was no basis to conclude that security personnel would have been able to deter or prevent re-entry by a person armed with a gun.

The appeals were allowed and the judgment of the District Court of New South Wales in favour of the respondents was set aside.

Supreme Court of New South Wales
Matouk v Hungry Jacks
[2009] NSWSC 1176

The plaintiff claimed to have suffered injuries when the seat he went to sit on collapsed causing him to fall to the ground.

The plaintiff filed a Notice of Motion seeking an interim payment under section 82 of the *Civil*

Procedure Act 2005 (NSW) which allows a Court, in certain circumstances, to order a defendant to make payment to the plaintiff of part of the damages sought to be recovered.

The Court ordered the defendant pay to the plaintiff an interim payment of \$35,000.

High Court of Australia
C.A.L. No 14 Pty Ltd v
Motor Accidents Insurance Board;
C.A.L. No 14 Pty Ltd v Scott
[2009] HCA 47

A fatal accident occurred on a road in Tasmania involving the plaintiff's husband. Shortly prior to the accident the plaintiff's husband had been drinking at a hotel. The plaintiff brought an action against the proprietor and the licensee of the hotel.

Whilst the plaintiff's husband was drinking at the hotel a decision was made to store the plaintiff's motorcycle in a hotel storeroom and the plaintiff's husband gave his keys to the licensee.

Shortly before the plaintiff left the hotel he asked the licensee for the keys to the motorcycle and was given them. After leaving the hotel on the motorcycle the plaintiff was involved in an accident.

The High Court held that, in the circumstances of this case, the appellants did not owe to the deceased a duty of care.

District Court of Queensland
Bergmann v Dengiz
[2009] QDC 327

The respondent appointed the applicant his real estate agent. A contract of sale was entered into however it was not completed.

The applicant commenced an action against the respondent for \$125,000 for commission payable under the terms of the appointment.

The applicant brought an application under rule 260A of the *Uniform Civil Procedure*

Rules for a freezing order to prevent the respondent disposing of or diminishing the value of his assets.

The Court dismissed the application with costs.

District Court of Queensland
Vos v Hawkswell & Anor
[2009] QDC 332

The plaintiff claimed damages for personal injuries arising out of a motor vehicle accident.

The defendant's vehicle had hit the plaintiff's vehicle from behind.

The plaintiff and the defendant gave substantially different versions of how the accident occurred.

Independent witness evidence was that the plaintiff drove in front of the defendant and stopped in front of him resulting in the defendant's vehicle colliding with the rear of the plaintiff's vehicle.

On the available evidence the Court found no negligence on the defendant's part and the plaintiff's claim was dismissed.

The Court did however assess quantum in the vicinity of \$121,000 in the event that the decision on liability was found to be incorrect.

Supreme Court of Queensland
Taylor v State of Queensland
[2009] QSC 318

This matter arose out of an incident occurring on or about 3 December 1994.

Proceedings had been commenced in November 1997 for damages for personal injury. Since that time various steps had been taken by both parties.

The plaintiff applied for an order to take a new step in the proceedings as no step had been taken for two years. The application was opposed by the State of Queensland.

The Court noted that much of the delay had been on the part of the plaintiff or his solicitors' however there had been long periods of delay by the State.

The Court considered that the delay involved had not been such as to show that the matter could not be fairly tried and therefore leave to proceed was granted.

Supreme Court of Queensland
Cosentino v Kent & Anor
[2009] QCA 355

The applicant worked for one of the respondents. During one of her shifts an amount of money went missing from the bar area. The applicant had been working in the vicinity of that area. The applicant was charged with stealing as a servant however the indictment did not proceed.

The applicant commenced proceedings against the respondents alleging to have suffered damage as a result of malicious prosecution.

At first instance the claim was dismissed. The applicant appealed.

The application for leave to appeal was refused.

Supreme Court of the ACT
Fleming v Shoobridge
[2009] ACTSC 80

The plaintiff, who was talking to the defendant, was leaning against the passenger side of the defendant's vehicle with his right arm resting on the windowsill and his left hand through the front passenger door handle.

At the end of the conversation the plaintiff moved back from the car and the defendant started the car to drive off. Unfortunately the plaintiff's hand was caught in the handle as the car moved away dragging him along.

Master Harper held that the driver of the defendant's vehicle was in breach of the duty of care which she owed to the plaintiff, giving

judgment for the plaintiff in the vicinity of \$325,000.

**District Court of Queensland
Moore v Australian National Car Parks Pty
Ltd
[2009] QDC 374**

The applicant brought a claim for damages for personal injury as a result of hitting her head on an overhead pipe in a shopping centre car park thereby falling to the ground suffering injury.

The accident occurred on 14 March 2006.

The applicant applied for leave pursuant to section 59(2)(b) of the *Personal Injuries Proceedings Act 2002*.

Effectively the applicant was applying for an extension of the ordinary limitation period of eight months.

An order was made granting leave to the applicant to commence proceedings before the end of November 2009.

**Supreme Court of Queensland
Krieger v Bundaberg City Council
[2009] QSC 412**

The plaintiff claimed damages for personal injuries suffered when lifting a saw in the course of his employment with the defendant. Liability was admitted.

At the time of the accident the plaintiff was 45 years of age. At trial he was 50 years of age.

An issue before the Court was whether the plaintiff had suffered a cervical myelopathy and if so whether it could be attributed either directly or indirectly to the subject incident. The Court considered the medical evidence concluding that, on the balance of probabilities, the plaintiff had not demonstrated the presence of cervical myelopathy.

Damages were assessed in the vicinity of \$165,000 clear of the WorkCover refund

including a global assessment of \$75,000 for impairment of earning capacity.

**WALSH HALLIGAN DOUGLAS
LAWYERS**

**LEVEL 12, 145 EAGLE STREET
BRISBANE QUEENSLAND 4000
GPO BOX 2474 BRISBANE 4001**

**PHONE: 61 7 3232 5700
FAX: 61 7 3232 5777**

**EMAIL: INFO@WHD.COM.AU
VISIT US ON THE WEB:
WWW.WHD.COM.AU**

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