

## Supreme Court of Qld disallows plaintiff's application to extend limitation period

*A recent decision of the Queensland Supreme Court, in which Carter Newell successfully appeared for the second defendant, has provided some hope that applications by plaintiffs to extend limitation periods can successfully be resisted in the appropriate circumstances.*

Acting on behalf of the second defendant, Carter Newell recently successfully defended an application by the plaintiff to pursue his claim by means of extending the limitation period. The Supreme Court of Queensland delivered its judgment in the matter of *Cross v Moreton Bay Regional Shire Council & Ors* [2011] QSC 92.

This decision has provided some hope that applications made by plaintiffs with respect to time limitation issues can successfully be resisted in the appropriate circumstances.

### Background

The plaintiff alleged to have suffered an injury to his lower back on 26 June 2006 when dismounting from the tray of a truck in the course of his employment with the Caboolture Shire Council (**the Council**). The truck was purchased by the Council from the second defendant, Ray Grace Motor Group Pty Ltd (**the supplier**). The third defendant, Paulger Engineering, manufactured the tray (**the manufacturer**).

On 12 December 2008, the plaintiff served the Council with a notice of claim for damages under the *Workers Compensation and Rehabilitation Act 2003 (Qld)* (**WCRA**). The Council served Contribution Notices pursuant to s 278A of the WCRA on the supplier and manufacturer on 18 September 2009 and 14 May 2010 respectively.

A compulsory conference pursuant to the WCRA proceeded on 27 August 2010. Failing settlement of the claim, the plaintiff then served notices of claim on the supplier and manufacturer pursuant to the *Personal Injuries and Proceedings Act 2002 (Qld)* (**PIPA**) on 3 September 2010, well outside of the three year limitation period.

Based on the claims for contribution made by the Council, the plaintiff argued that the limitation period for the claims against the supplier and manufacturer should be extended in accordance with s 31(2) of the *Limitation of Actions Act 1974 (Qld)* (**LAA**) to a date one year after the plaintiff's notification of a material fact of a decisive character that was not within the

means of his knowledge until receipt of copies of the contribution notices.

Both the supplier and manufacturer opposed the plaintiff's entitlement to do this on the basis that the plaintiff was not made aware of any material fact capable of extending the three year limitation period which had expired on 26 June 2009.

In September 2010, the plaintiff applied for the court's leave to commence proceedings against the supplier and manufacturer under s 43 of the PIPA. That application was successful, with Her Honour Lyons J concluding that, "even though an application for an extension of time may have poor prospects of success, leave should, nonetheless, be given under section 43". Her Honour concluded that it was sufficient for the knowledge to be capable of being a material factor of a decisive character and that Her Honour was not required to determine that issue at that time.



Proceedings were therefore instituted against all three defendants, however the plaintiff was still required to obtain the court's leave to proceed outside of the three year limitation period.

### The Application

On 17 March 2011, the plaintiff made an application for an order pursuant to s 31 of the LAA to extend the limitation period. The plaintiff further sought an order from the court pursuant to s 18(1)(c)(i) of the PIPA that the notices of claim served in accordance with the PIPA were compliant or, alternatively, that the plaintiff be granted leave to proceed with the claims despite the non-compliance.

This application was opposed by the supplier and manufacturer.

His Honour Boddice J heard the application and reached his decision based on the three step approach outlined in *Dick v University of Queensland* [2000] 2 Qd R 476, which involved:

1. Enquiring as to whether the facts of which the applicant was unaware were material facts;

2. If they were, ascertaining whether they were of a decisive character; and
3. If so, determining whether those facts were within the means of knowledge of the applicant before the specified date.

If those steps can be demonstrated, Boddice J held that consideration of any prejudice suffered to the defendants must be given.

The plaintiff argued that he was unaware of any potential negligence of the supplier or the manufacturer prior to the service of contribution claims by the Council.

Carter Newell argued on behalf of the supplier that the plaintiff was aware that it had supplied the truck to the Council prior to the Council's claim for contribution and argued that no further material fact had come into the plaintiff's knowledge since that time in relation to any negligence of the supplier.

Boddice J concluded that the plaintiff had not demonstrated that he had learned a material fact of a decisive character regarding the supplier in the year prior to the expiration of the limitation period and therefore found the plaintiff had not satisfied the requirements of s 21 of the LAA.

Acting on behalf of the supplier, Carter Newell obtained orders that its costs be paid by the plaintiff and that the claim against it be discontinued.

The manufacturer argued that the tray on the truck was clearly marked with branding identifying the manufacturer so there was no question as to the identity of the manufacturer throughout the life of the plaintiff's claim. However, the plaintiff argued that it only came into knowledge of the Council's reliance on the manufacturer for the design and methods of manufacture of the tray as a result of the terms of the contribution claim.

Boddice J concluded the plaintiff coming into knowledge that the Council had allegedly relied on the manufacturer at the time the Council's contribution

claim was made against the manufacturer constituted the discovery of a material fact of a decisive character. As a result, Boddice J ordered that the limitation period be extended to a date one year after that contribution claim was made.

In reaching that decision, Boddice J did not consider the manufacturer would suffer any prejudice as a result of the extension of the limitation period in light of its involvement in the WCRA claim as a contributor.

### Ramifications of this decision

Traditionally, courts are loathe to restrict a plaintiff's rights to pursue a claim against a party. Generally, plaintiffs will be given leniency in applications to pursue claims despite non-compliance with the pre-court procedures outlined in the PIPA and defences of applications under its provisions are rarely successful.

However, the provisions of the LAA are more strict in their application. In this case, it was determined that the application made pursuant to s 43 of the PIPA needed to be opposed despite its likely success in order to reach the stage where the plaintiff would be required to apply for further orders under the LAA.

In light of the absence of any evidence of the supplier's liability for the plaintiff's claim in this case in addition to the absence of any further material fact coming into the plaintiff's knowledge at any later time, Carter Newell took the plaintiff to task in pursuing a claim against it.

This case provides a precedent that applications to proceed in circumstances where plaintiffs have been tardy in pursuing claims and complying with the PIPA procedure or attempting to pursue claims without merit may be successfully opposed.

Though courts will often favour a plaintiff's entitlement to proceed with claims when possible, it is worth keeping the plaintiff's obligations in relation to time limitations in mind when considering whether to merely consent to orders sought by plaintiffs or whether further consideration of opposition to such applications is merited.

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