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Defence Struck Out: Both Limbs

CAFFREY V AAI LIMITED & ANOR [2017] QSC 339

This matter involved an application by the Plaintiff, Mr Caffrey ("Caffrey"), to strike out certain parts of the defence filed by the first Defendant, AAI Limited ("AAI"). Accordingly, the second Defendant, RACQ Insurance Limited, had no involvement in this application.

Material Facts

Caffrey was a police officer with the Queensland Police Force. On 17 February 2013 Byron Williams was driving a motor vehicle when he veered off the road and struck a tree, resulting in his immediate death. No other motor vehicle was involved in the accident. Caffrey was required to attend the scene of Mr Williams's accident in the course of the performance of his employment duties. Caffrey alleged that whilst at the scene of the accident he was required to deal with fatal injuries suffered by Mr Williams and coordinate police operations at the scene. As a consequence of that traumatic exposure, Caffrey alleged that he suffered psychiatric injuries.

AAI, the compulsory third party insurer of Mr William's vehicle, "did not admit" (as distinct from denied) that it was negligent in respect of Caffrey's alleged traumatic exposure and subsequent injury. Further, it denied that it owed Caffrey a duty of care to take action to avoid risk of psychiatric injury. Caffrey sought to strike out that pleading from AAI's defence on the basis that it was "bad in law", or was otherwise liable to be struck out pursuant to Rule 171 of the *Uniform Civil Procedure Rules 1999* (QLD).

Alternatively, Caffrey sought a preliminary determination that AAI owed him a duty of care in relation to the motor vehicle accident which allegedly caused his psychological injuries.

Supreme Court's Decision

As set out in *Lee v Abedian [2016]* QSC 92, the governing principle applying to an application to strike out a defence on the basis that a pleaded matter is "bad in law" is that:

> *"The power cannot be exercised once it appears that there is a real question to be determined, whether of fact or law, and that the rights of the parties depend on it."*

In this case, Justice Applegarth stated that a defence ought not to be struck out unless the pleading in question is so obviously untenable that it could not possibly succeed.

Caffrey's application relied primarily up on the High Court's decision in *Wicks v State Rail Authority of New South Wales (2010)* 241 CLR 60. That decision concerned whether the Rail Authority owed a duty of care to police officers in the role of "rescuers". The relevant question in that matter was whether it was reasonably foreseeable that a rescuer attending a train accident might suffer psychiatric injury as a result of his experiences at the scene.

In this matter, Caffrey was not a "rescuer", but attended the

scene of the accident as a matter of duty and was exposed to the aftermath of the collision as a consequence of performing those duties. Justice Applegarth determined that the duty of care owed to a "rescuer" established in *Wicks* could not be applied by way of analogy to a police officer who was not necessarily a "rescuer".

Caffrey's pleadings, supplemented as they were by particulars, did not reveal all material facts and nuances of Caffrey's case. Accordingly, the determination of the existence of a duty of care required further evidence to be adduced at trial. For example, evidence in relation to Caffrey's role at the accident, what he felt obliged to do, and what may have been done differently by other persons who were in attendance at the scene of the crash. On that basis, Justice Applegarth was not satisfied that the existence of a duty of care was beyond argument, and accordingly, the relevant pleadings in AAI's defence were not struck out.

Secondly, the Court considered Caffrey's application for preliminary determination of the existence of a duty of care.

The Court reiterated that only basic and material facts were pleaded and admitted. Despite pleading that he was required to perform the duties that exposed him to the risk asserted, those facts could not be sufficiently made out without hearing further evidence. Therefore, the facts (beyond certain matters admitted in the pleadings) were not proven or agreed.

Justice Applegarth concluded that he could not summarily decide the duty of care issue for a number of reasons. Firstly, it would not enhance the resolution of the real issues in dispute between the parties and would deprive AAI of an opportunity to establish its pleadings on evidence at trial. Further, it was stated that to summarily decide a complex issue of law might stultify the development of the law.

Accordingly, both limbs of Caffrey's Application failed and the Application was rejected by the Court.

Implications

This decision was primarily concerned with the circumstances in which part of a defence may be struck out or a salient issue may be summarily decided. Evidently, that power is discretionary and the threshold to do so is quite high.

Additionally, this authority considered the landmark High Court decision of *Wicks*. Justice Applegarth considered that a Police officer attending the scene of an accident should not automatically be considered to be a "rescuer" such that a duty of care is owed. Determination of this issue requires consideration of the evidence and each case should be determined on its own facts.

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