

WHEN DUTIES CONFLICT - EMPLOYER SHOULD HAVE PROTECTED ITS EMPLOYEE FROM ASSAULT BY CLIENT

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IN ISSUE

- Whether the plaintiff's sexual assault was reasonably foreseeable.
- Whether the defendant employer took reasonable action to ensure the safety of its employee.
- The impact of the plaintiff's pre-existing psychiatric condition/vulnerability on the assessment of quantum.

THE BACKGROUND

The plaintiff was employed as a family support worker with the defendant which provides support to socially and economically disadvantaged young people. On 12 April 2011, the plaintiff was sexually assaulted by a client of the defendant at a meeting, during which the client caressed the plaintiff's genitalia with her toes under the table. The plaintiff alleged that as a result of this incident, and prior dealings with the client, she suffered a serious psychiatric illness.

Evidence was given by a number of employees/ex-employees of the defendant regarding the client's drug use and sexualised, violent, aggressive and threatening behaviour, which was well-documented in the defendant's records.

There was evidence that prior to the incident the plaintiff had been sexually abused as a child by an older cousin and by three other men, including her paternal grandfather, as well as being involved in an abusive relationship while at university. However, the evidence was that the plaintiff had subsequently married, had three children and was leading "a happy, fulfilling life" prior to the incident.

THE DECISION AT TRIAL

The court noted that this was not simply a case where the plaintiff suffered a psychiatric injury because of stressful work which she had agreed to do as part of her contract of employment. The trial judge found that instead the plaintiff suffered psychiatric injury as a result of a sexual assault which happened during the course of employment.

The court held that taking into account the "plethora" of evidence of other incidents involving

the client, the defendant should have been alerted to the risk that the client might sexually assault and/or behave in an improperly sexual way with its employee/s. It was also clearly foreseeable that an employee could suffer psychiatric injury as a result of sexual assault.

It was held that given the potentially serious consequences of the foreseeable risk eventuating, the defendant should have declined to continue to offer further services to the client. There was no reason why the scope of the defendant's liability should not extend to the injury caused by its breach. Accordingly, the defendant was found liable for the plaintiff's injury.

In respect of quantum, the medico-legal evidence presented at trial showed that although the plaintiff was vulnerable to injury due to her history, it was unlikely that she would have developed her current serious mental disorder without the sexual assault which was perpetrated on her by the defendant's client.

The plaintiff was awarded \$1,508,639.35 in damages (after the deduction of WorkCover's refund).

IMPLICATIONS FOR YOU

In dealing with and/or caring for clients who are potentially violent or otherwise dangerous, employers need to ensure that their own employees' safety is a paramount consideration.

A defendant cannot always rely on a plaintiff's prior psychiatric conditions or issues to reduce a claim for damages particularly in circumstances where the plaintiff was essentially symptom free at the time of the incident.

Beven v Brisbane Youth Service Inc [2016] QSC 163

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