

# PLAINTIFF UNSUCCESSFUL IN CLAIM AGAINST EMPLOYER FOR SUBSTANTIALLY PRE-EXISTING INJURIES

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Judgment for the Defendant in a claim for personal injuries allegedly sustained in the course of employment where the Plaintiff failed to disclose the extent of his substantially pre-existing injuries.

## IN ISSUE

- Were the injuries sustained in the manner alleged?
- Did the employer breach its duty of care?

## THE BACKGROUND

The Plaintiff sought damages from his Employer (the Defendant) for injuries allegedly sustained in the course of his employment as a floor sander in May 2013. He alleged that he sustained both a physical injury to his left hand (a pain syndrome) and a consequent psychiatric injury (adjustment disorder with anxiety and depressed mood) in the course of removing a floor.

The task the Plaintiff was undertaking was a relatively simple task, although physically demanding. The Defendant's witnesses gave evidence of the instructions and equipment provided to the Plaintiff.

Similar injuries (chronic regional pain syndrome and a depressive illness) had been the subject of a common law claim in New South Wales which settled in October 2008 for \$475,000. By 2012 the money had been spent and the Plaintiff was homeless. The Plaintiff was still seeking treatment, including strong pain killers, for those earlier conditions in 2012. He applied for the disability support pension in November 2012 on the basis of his depression and left arm problems. He failed to disclose the extent of his previous conditions to reporting doctors in this case.

## THE DECISION AT TRIAL

The Plaintiff failed to convince the Judge that the Defendant did not provide him with the necessary instructions or assistance. Ultimately the Judge was not satisfied that the Defendant breached any duty of care owed by it to the Plaintiff.

The Judge found that none of the doctors were provided with an accurate history by the Plaintiff. But it was accepted that the Plaintiff had some physical condition which led to chronic pain. His lack of candour to the various doctors affected the weight of their opinions.

While he did not consider the Plaintiff was actively setting out to deceive, the Judge was left in significant doubt as to how the injury was sustained. The Judge believed there was an element of reconstruction to his evidence.

## IMPLICATIONS FOR YOU

The Plaintiff in this case did not fail because of one issue, nor was he found to be 'actively setting out to deceive'. But the failure to disclose the extent of his pre-existing conditions infected the weight of the medical evidence. His lack of candour was no doubt a factor in the Judge's mind when considering his description of events.

*Bergin v Queensland Cork & Timber Solutions Pty Ltd* [2019] QDC 141

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