COMMON LAW PRACTICE UPDATE 75

False Imprisonment

The plaintiffs were arrested at their homes by police in *State of NSW v Abed* [2014] NSWCA 419. The arrests followed a phone message to police which suggested that the first plaintiff had broken into a house armed with a knife. At the scene police informed the first plaintiff that she was under arrest for assault without any further explanation being given. She was later advised of the reason for her arrest and further charged with break and enter with intent to commit murder, along with a breach of a bail undertaking from a few days earlier. The first plaintiff was held on remand and applications for bail were refused. When the Director of Public Prosecutions withdrew the charges against her and she was released from custody, the first plaintiff commenced proceedings in the District Court for false arrest, false imprisonment and religious prosecution, claiming that the State of NSW was vicariously liable for the conduct of the police officers. A claim was also made against two other persons for malicious prosecution.

The trial judge found that the manner of arrest constituted a trespass to the person and that false imprisonment followed, awarding $10,000 for trespass and $10,000 for false imprisonment. He found no improper purpose in respect of the second plaintiff, but that the State was liable for the subsequent malicious prosecution. He awarded the second plaintiff $195,000 in damages. He also found the other two defendants personally liable, jointly and severally. The defendants appealed.

The common law requires that the arrested person be informed by the arresting officer of the true ground on which the arrest is made. The relevant issue here was whether the first plaintiff, when told she was being arrested for assault, was given enough information. In view of the fact that the first plaintiff had displayed no sign of aggression towards police at any time, the trial judge's finding of trespass to the person as to the manner of arrest was upheld. As to malicious prosecution, although the Crown was aware relatively early that the case was weak, the evidence was not sufficient to establish an improper purpose on the part of the State of NSW. In order to establish improper purpose, the dominant purpose of the prosecutor must be one other than the proper invocation of the criminal law, such as spite or ill-will, to punish the accused or to stop a civil action brought by the accused. The improper purpose must be the sole or dominant purpose motivating the prosecutor. In this case there was insufficient evidence to support this proposition and, similarly, there was insufficient evidence to show that the police and/or the DPP acted maliciously.

Whilst the lack of reasonable and probable cause in pursuing a prosecution may be evidence of malice, mere inadequacy of cause is not necessarily sufficient. As to the other defendants who had caused the intervention of the police, the defendant Ms Younis had made and maintained false allegations against the plaintiff and the other defendant, Mr Younis, assisted or aided and abetted his wife initiating and pursuing those claims. Their actions were malicious and without reasonable cause, and accordingly their appeals failed. The damages awards, which the plaintiff had argued were inadequate, were upheld as they were open in the circumstances.

The trial judge had rejected the claims for aggravated and exemplary damages in relation to both trespass and false imprisonment. So far as the claims against the police were concerned, this decision was correct. The plaintiff had also claimed that the award of $125,000 in

general damages was inadequate. Gleeson JA considered that it was not so inordinately low as to justify intervention. As the initial award of damages of $10,089 for past economic loss involved an error, the higher figure of $67,840 plus superannuation of $6,105.60 was allowed. An error was also conceded concerning the award of $45,000 for future economic loss but it this was in the available range. However, superannuation should have been allowed, to which should be added future superannuation of $5,305.50. The plaintiff did not press a claim for aggravated or exemplary damages against Mr and Mrs Younis.

Slip and fall in employment

The plaintiff sued the occupier of premises and his employer in *Hennessy v Patrick Stevedores Operations & Anor* [2014] NSWSC 1716. The plaintiff was injured in the course of his work as a security guard at the container terminal at Port Botany. He tripped on entering a hut at night in wet conditions, alleging that there should have been an awning over the doorway, that the step up was excessive, there should have been a grab rail and that the doorsill was excessively slippery. Campbell J found that wet smooth metal is likely to be slippery and there was negligence in the manner of injury. There was also a dispute between the occupier and the employer as to who was responsible. Patrick Stevedores maintained control over the premises and owed the usual duty as an occupier. The employer "owed Mr Hennessy the stringent duty of care imposed by the common law of negligence on an employer". Campbell J was satisfied that a reasonable person in the position of the occupier would have built an additional step and an awning over the hut's entrance and therefore found Patrick Stevedores to be negligent. Although the employer did not have the power to alter the premises, he could have requested the occupier to fix the problem, and his failure to do so was also negligent. In the circumstances, no contributory negligence was apparent. Responsibility was apportioned 60% to the occupier and 40% to the employer.