



HIGH COURT OF AUSTRALIA

Public Information Officer

20 July 2006

CAROL ANNE STINGEL v GEOFFREY CLARK

Ms Stingel was within the six-year limitation period when she brought an action against Mr Clark for post-traumatic stress disorder in 2000 over alleged rapes in 1971, the High Court of Australia held today.

Ms Stingel, 51, alleges she was assaulted and raped by Mr Clark on two occasions in March and April 1971, first at the Warrnambool Municipal Gardens and then at a nearby beach. She alleges she now suffers injury in the form of post-traumatic stress disorder of delayed onset and that she only became aware of the connection between the attacks and the injury in 2000. In August 2002 Ms Stingel commenced an action for damages against Mr Clark in the Victorian County Court. She claims aggravated, exemplary and punitive damages for trespass against the person. The merits of the case have not yet been tried. Under Victoria's *Limitation of Actions Act*, actions in tort have a general limitation period of six years from the date on which the cause of action accrued – in the case of trespass, from the date of the trespass – which had long expired by 2002.

Ms Stingel claims her case falls under section 5(1A) of the Act which provides that an action for damages for negligence, nuisance or breach of duty, where damages are for personal injuries from a disease or disorder contracted by a person, may be brought within six years of the date on which the person first knew they had suffered injury. Mr Clark argued that section 5(1A) did not apply because an action for trespass is not an action for breach of duty so the general limitation period applied. The County Court rejected this argument. Mr Clark appealed to the Court of Appeal, which, by a 3-2 majority, allowed the appeal on the ground that the facts did not attract section 5(1A). The Court of Appeal held that Ms Stingel's injury was traumatic, not insidiously progressive in the manner of asbestos-related diseases, so her action was statute-barred. Ms Stingel appealed to the High Court. Mr Clark also contended that the "breach of duty" argument should be accepted by the Court.

The High Court, by a 5-2 majority, allowed the appeal and rejected Mr Clark's contention. The words "breach of duty" had been held in Victoria to cover trespass to the person, including intentional trespass. The Court held that these earlier decisions should be followed and that this construction accorded with the legislative history, context and purpose of the Act. The Court overturned the Court of Appeal's interpretation of "disease or disorder contracted" as these words are not limited to insidious conditions. The Victorian Parliament used general language and made no reference to insidious diseases. The High Court held that nothing in section 5(1A) limits its operation to cases in which a disorder was contracted before the expiry of the usual six-year limitation period.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*