



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B65/2023
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Important Information

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Form 27F – Outline of oral submissions

Note: see rule 44.08.2.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

JOANNE EDITH WILLMOT

Appellant

and

THE STATE OF QUEENSLAND

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: These submissions are in a form suitable for publication on the internet.

Part II:

1. The new normative structure created by the fundamental change brought by section 11A of the *Limitations of Actions Act 1974* (Qld) prevents the impoverishment of evidence consequent on the passing of time constituting a case for the exceptional decision to permanently stay proceedings. Some cases that may have threatened an abuse of process in the absence of s11A, no longer do so in its radically new context. (AS [19], [49], AR, [5] and [6]).
2. The Respondent is far from being a passive bystander to a prospective trial of this case, let alone unable to participate to contest the Appellant's claim by ordinary adversarial means. Most of the complaints made in the Respondent's submissions actually demonstrate its intention and capacity to contest the Appellant's claim at trial by reference to, amongst other things, the onus of proof and the familiar techniques discussed in *Blatch v Archer* and *Watson v Foxman*, by way of example only. (AS [43] – [52]; AR [13] – [16])
3. It does not inform the prospect of an unfair trial amounting to an abuse of process, so as to require a permanent stay, that the Respondent contemplates the possibility that the Appellant may succeed at trial notwithstanding her onus and deployment of these

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common law techniques. Some of the Respondent's arguments illegitimately speculate that an eventual trial judge will err in critical fact finding. On any view, that has nothing to do with the assessment of a prospective unfair trial as the foundation of a permanent stay. (AR [8] and [9]; [13] – [16])

4. It does not render trial of the Appellant's claim against the Respondent prospectively unfair that, with respect to the psychiatric sequelae of long past events, the Appellant shoulders a burden (to a degree) of attributing one or more of the relevant sequelae to one or more of the relevant events for which she seeks to hold the Respondent liable. Familiar common law techniques of a mundane kind have long assisted tribunals of fact in such cases. It is antithetical to those judicial approaches to regard either the occasions for their deployment or the fact they are deployed as suggesting in any way unfairness of process. (AS [33]; AR [10] – [12])
5. The Respondent's complaints about prospective forensic difficulties concern matters that are also difficulties for the Appellant, who bears the trial onus – not a promising basis for an argument of unfairness in adversarial process. Those complaints should not be permitted to distort the permanent stay power into some kind of summary dismissal in a case where the administration of justice obviously entails assessment of the credibility and reliability of the Appellant as a witness. (AS [23], [26], [45], [51]; AR [7], [8], [13] – [16]).

6 May 2024



Bret Walker