



HIGH COURT OF AUSTRALIA

1 November 2023

GLJ v THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH FOR THE DIOCESE OF
LISMORE
[2023] HCA 32

Today, the High Court, by majority, allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned two issues: (1) the appropriate standard for appellate review of an order of a court permanently staying proceedings; and (2) whether the circumstances of this matter were so exceptional so as to justify a permanent stay.

In January 2020, the appellant, GLJ, commenced proceedings in the Supreme Court of New South Wales against the respondent for damages for personal injury resulting from child sexual abuse alleged to have been perpetrated against her in 1968 when she was 14 years old. The alleged perpetrator was a priest incardinated in the Diocese of Lismore. The respondent is the body corporate responsible for the Diocese, which, the appellant submitted, breached its duty of care to her and was vicariously liable for the alleged abuse by the priest. Although the proceedings were commenced 52 years after the alleged child sexual abuse, sub-ss 6A(1) and (2) of the *Limitation Act 1969* (NSW) relevantly provide that claims of this nature may be brought at any time and are not subject to any limitation period.

Before the primary judge, the respondent sought orders, relevantly, that the proceedings be permanently stayed on the grounds that: it did not receive a complaint relating to the appellant's allegations until 2019; and, virtually all senior people who could have provided instructions or given evidence had died, including the priest. Accordingly, it was submitted that there could not be a fair trial. The primary judge refused to stay the proceedings as: (1) a fair trial need not be a perfect trial; (2) child sexual abuse, of its nature, occurs in private and eyewitness evidence is rarely available; (3) the respondent's submissions indicated it could contradict the appellant's claims with documentary evidence; and, (4) in amending the *Limitation Act* to include s 6A, Parliament had determined that such claims should be permitted to proceed despite the effluxion of time and impoverishment of evidence, provided a fair trial can be had. The Court of Appeal proceeded on the basis that the primary judge's decision not to stay the proceedings was discretionary and, upon identifying error of principle in the reasoning of the primary judge, re-exercised the power to permanently stay the proceedings and granted a stay.

The High Court held that the decision to grant a permanent stay of proceedings involves the questions whether a trial will be necessarily unfair or so unfairly and unjustifiably oppressive as to constitute an abuse of process, with each question admitting of but one right answer. Accordingly, the decision is not discretionary, and the applicable standard of review is the "correctness standard" identified in *Warren v Coombes* (1979) 142 CLR 531. The Court, by majority (Kiefel CJ, Gageler and Jagot JJ; Steward and Gleeson JJ dissenting), held that the alleged abuse of process must be evaluated in the legal context created by the insertion of s 6A in the *Limitation Act* and the jurisdiction to grant a permanent stay must be understood as a measure of last resort. The grant of a permanent stay to prevent an abuse of process involves a decision that permitting a matter to go to trial and the rendering of a verdict would be irreconcilable with the administration of justice through the operation of the adversarial system.

- *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.*