

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION**

McCLELLAN CJ at CL

THURSDAY 8 APRIL 2010

**297559/09 DYE v COMMONWEALTH BANK OF
AUSTRALIA**

JUDGMENT – Stay application

- 1 **HIS HONOUR:** The matter before me is a claim in defamation brought by the plaintiff who was an employee of the first defendant. She alleges she was defamed by the first defendant and the second defendant. The circumstances of the defamation as I understand it relate to allegations which the plaintiff has made that she was sexually harassed by at least one employee of the first defendant.
- 2 The proceedings before me are one of two defamation actions in this Court, the other is brought by the plaintiff against Fairfax Publications Limited. I have not looked at that matter but I assume that the cause of action there is based upon publication by Fairfax of similar material.
- 3 Apart from these two proceedings, the plaintiff has also commenced proceedings in the Federal Court seeking compensation and damages. The circumstances in which the compensation is sought, as I understand it, arise from the same factual matrix as the defamation action, although, of course, the issues which will require resolution will be different.
- 4 The Federal Court proceedings are fixed for hearing commencing on 6 September 2010. Those proceedings were commenced well before the

proceedings in this Court. The proceedings in this Court were commenced in May of 2009, and significant progress has been made in their preparation for trial. The outstanding formal matters requiring completion apparently are the plaintiff's answers to interrogatories served upon her by the defendants. Those answers have been prepared and are awaiting settlement by senior counsel.

- 5 It is apparent that significant preparation of the Federal Court proceedings has been undertaken at least in relation to the identification and discovery of relevant documents. The picture painted for me by counsel for the plaintiff indicates that there are many documents which may be of some relevance to those proceedings, the extent to which they may be relevant to the defamation proceedings is not immediately apparent but no doubt some of them will have relevance.
- 6 It is also plain that some of the factual matters which will be aired in the Federal Court proceedings are the same or similar to factual matters which will require resolution in the defamation proceedings. Although again, the ultimate issues requiring resolution will be significantly different.
- 7 The plaintiff brings a motion seeking a stay of the proceedings until 31 October 2010. It was submitted that that stay should be granted because the Federal Court proceedings should be given a priority, they were commenced first, and it is submitted that the resolution of those proceedings may have an impact upon the defamation proceedings. It was further submitted there is a public interest in having the Federal Court proceedings heard before the defamation proceedings.
- 8 Counsel addressed the question of two courts determining relevant factual matters and of concerns in relation to the time that witnesses will be required to give to the proceedings. The defendants oppose the application. Fundamentally that opposition is framed on the circumstance that the allegations which the plaintiff has made in relation

to some - and in particular one - employee of the first defendant, are serious and are presently causing difficulties for those persons in their daily business lives. It is not hard to imagine given the nature of the allegations which have been made that those persons are suffering under real difficulties at the present time.

- 9 It was submitted that because the defamation proceedings are now well advanced, and because preparation of the Federal Court proceedings will embrace the preparation necessary for the defamation proceedings, the stay should not be granted; rather, that a hearing date at some appropriate period after the completion of the Federal Court proceedings should now be provided.
- 10 The plaintiff has indicated through counsel that she wishes to take further steps in relation to the preparation of defamation proceedings. I am told that it is proposed that leave to administer further interrogatories may be sought. There may be a necessity for further discovery. Of some significance is the fact that the Plaintiff is contemplating bringing a motion to have the defamation proceedings transferred to the Federal Court.
- 11 Such an application, although foreshadowed, has not been made. Quite why that is so I do not know given that the defamation proceedings have now been on foot for at least nine months, and the opportunity to bring the application has been available during that time.
- 12 Be that as it may, it seems for me that the balance which I must assess between the interests of the parties and the public interest in these proceedings must result in my giving the defamation proceedings a hearing date now. That hearing date should be in November of this year, which allows a period between the completion of the Federal Court proceedings and the hearing of the defamation proceedings. It seems that the plaintiff is rightly concerned about being required to prepare two cases and run two cases at the same time. And, furthermore, I am satisfied that it is appropriate that given the breadth of the issues that will

arise in the Federal Court proceedings, those proceedings should be heard before the defamation proceedings. However, because it seems to me that much of the material in the defamation proceedings will be factual material covered in the Federal Court proceedings, it is appropriate that the defamation proceedings be fixed at a time proximate to the Federal Court proceedings so that the significant parts of the preparation relevant to the defamation proceedings, which have been taken in the Federal Court proceedings, are not wasted and, thereby, avoiding the necessity for counsel and solicitors to gear up again for a similar factual dispute.

- 13 What I propose is that the matter will be fixed for hearing in this Court commencing on 15 November 2010, which I understand is accepted by the parties as providing sufficient time for their resolution before the Christmas long vacation. I accept that there may be reason subsequently for that date to be revisited should there be problems in preparation. I also accept that the plaintiff may seek to have the matter transferred to the Federal Court. If that course is taken then of course that application will be considered and determined on its merits. But it seems to me that by fixing the matter in November the plaintiff's position is not unreasonably prejudiced, and it also ensures that the earliest convenient date for the resolution of these serious allegations can occur, and allow people thereafter to get on with their normal lives.
- 14 The order I make is that the motion is formally refused. I fix the matter for hearing on 15 November 2010. Liberty is granted. Costs of today will be the defendants' costs in the cause.
- 15 I direct the plaintiff to answer the interrogatories served on her by the defendants by 14 May 2010. I further direct that if she seeks to administer interrogatories that they be served upon the defendants by the same date, 14 May 2010.
