

RE: KATHLEEN MONICA BILES v STATE OF NEW SOUTH WALES

Matter No. 3199 / 08

## PLAINTIFF'S PROPOSITIONS OF LAW

INTRODUCTION

DISTRICT COURT OF NSW  
FILED  
AT SYDNEY  
on - 6 NOV 2012

Two applications are before the Court viz:

- (a) The defendant's application for a stay of proceedings on the basis that (irrespective of whether the action is statute barred) a fair trial cannot be had, and 
- (b) The plaintiff's application to strike out the Limitations aspect of the defence, or alternatively extend the limitation period under the Limitation Act 1969 ("the Act").

The plaintiff sets out below the propositions of law she says are applicable to each application. The plaintiff does not, in this document, purport to analyse the evidence, discuss the authorities or make submissions on substantive issues but reserves those matters to the conclusion of the applications, when the plaintiff will address the legal issues in the context of the evidence presented by the parties.

THE DEFENDANT'S APPLICATION TO STAY PROCEEDINGS

1. The jurisdiction of the District Court is limited to that expressly conferred upon it by the Statute.
2. The Acts and Rules which govern the operation of the court do not confer any power for a permanent stay of proceedings on the grounds sought by the defendant.
3. *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256, the predominant authority relied upon by the defendant in support of this application, involved consideration of "implied" powers in the Supreme Court.

4. Implied power will arise in an inferior court only when necessary for the effective exercise of jurisdiction expressly conferred, but will be confined to power derived by implication from the statutory provisions which confer the particular jurisdiction.
5. There is no warrant or precedent for implying a power to grant the relief the defendant seeks in the present case.
6. Jurisdiction aside, the defendant has not established objectively that a fair trial is no longer possible.

#### THE PLAINTIFF'S APPLICATIONS

##### Statutory Provisions

7. The provisions of the Limitations Act 1969 ("the Act") relevant to this application are as follows:
  - (a) s.11(3)
  - (b) s.14
  - (c) s.52
  - (d) s.57
  - (e) s.58
  - (f) s.60E
  - (g) s.60F
  - (h) s.60G
  - (i) s.60I
  - (j) Schedule 5

##### General

8. The limitations period is prescribed under s.14 of the Act.

Disability

9. At all relevant times the plaintiff has been under a disability within the meaning of ss.11 and 52 of the Act.
10. The determination of whether the plaintiff suffered or suffers a disability is a question of fact to be determined on the evidence.
11. Alternatively proceedings were commenced within time, subsequent to any cessation of the plaintiff's disability.
12. As such, the Limitation aspect of defence is misconceived and should be struck out.

Extension

13. Alternatively this is an appropriate case to extend the limitation period pursuant to s.58 and/or s.60G of the Act.

Section 58

14. In relation to s.58 of the Act, it is contended that:
  - (a) material facts of a decisive character were not within the means of knowledge of the plaintiff until a date after the year preceding the expiration of the limitation period, and
  - (b) palpably the plaintiff provides evidence to establish the cause of action she asserts.
15. The material facts in question are essentially the existence and cause of the plaintiff's psychiatric injury. Such facts come within the definition of material facts contained in s.57B(1) of the Act.

16. Similarly those material facts are of a decisive character within the meaning prescribed in s.57B(1) of the Act.
17. Section 58 of the Act allows extension of the limitation period to one year after the plaintiff gained knowledge of a material fact. Such an extension of the limitation period in the present case removes any bar upon the plaintiff's suit.

Section 60G

18. Pursuant to Schedule 5 of the Act, s.60G applies to the cause of action alleged by the plaintiff.
19. It is just and reasonable to extend to limitation period under s.60G of the Act in all the circumstances.
20. The plaintiff was unaware of (either all or alternatively some of) the matters referred to in paragraphs 60I(1)(a)(i)(ii) and (iii) of the Act, until a time less than 3 years prior to the application being made in these proceedings.
21. The court is to have regard to the matters referred to under s.60E of the Act, which on balance favour the extension of time sought by the plaintiff.

Dated: 5 November 2012