



**CROWN SOLICITOR'S OFFICE**  
NEW SOUTH WALES

## File Note

**Matter:** AIL & D B v State of NSW - Alleged Abuse While in Foster Care **Telephone:**

**Matter No:** 200801481 **Conference:**

**CSO Officer:** Claire Miles **Attendance:**

**With:**

**Date:** 20 October 2009 **Time:**

### AIL & D B v State of NSW - Alleged Abuse While in Foster Care

This matter was listed before Judge Truss in the District Court at Sydney on 16 October 2009. Mr Saidi and Mr Arblaster appeared for the defendant. Ms Claire Miles was the instructing solicitor and Ms Robyn Young was in attendance at court. Mr Catsanos and Ms Wall appeared for the plaintiffs.

Mr Catsanos argued that Judge Knox should be hearing this Motion as he is already part heard in this matter and there have already been 2 days worth of hearing on this. He was of the view that the plaintiff's had provided adequate particulars which consisted of a 20 page response to the orders made by Judge Knox on 11 May 2009.

The Limitation Motion is yet to be determined.

Mr Saidi argued that this case should not be transferred to Judge Knox.

The defendant had prepared written submissions and these were handed up to Her Honour.

There were 5 affidavits of Evangelos Manollaras which were marked as read: 29 April 2009, 2 x 11 February 2009 and 28 July 2009.

Angelo's affidavits were marked as exhibits 2-5 (I need to see the transcript to check the date of Angelo's affidavit and corresponding exhibit number).

The letter from the Women's Legal Service dated 23 September 2009 and the letter from the Crown Solicitor's Office in reply dated 1 October 2009 were tendered and marked as exhibit 1.

The affidavit of Dianne Hamey filed 24 September 2009 was marked as exhibit A and the thick folder of material (Exhibit E1) was marked as exhibit B.

The plaintiff accepted that the particulars supplied were inadequate.

The plaintiff said that it had prepared 15 Statements of Particulars under Rule 15.12 for each plaintiff. However, they were all the same for each plaintiff.

The defendant indicated that the Rule 15.12 particulars should be separate for each plaintiff. The defendant has not been provided with particulars of treating doctors, medical treatment, continuing disabilities etc. The plaintiff indicated that it was only a matter of collating that material and amended Statements of Particulars will be provided asap.

The Limitations dispute will rely on medical evidence of disability.

Judge Truss was reluctant to make Order 3 in our Amended Notice of Motion because that was dealt with by Knox, he had made those orders.

Mr Saidi indicated that some plaintiff's are under a disability, the defendant wants to investigate and is entitled to ask for that information now. Mr Saidi indicated that the defendant has only been provided with global responses. Mr Saidi referred Her Honour to the defendant's submissions.

At approximately 12:30pm Her Honour said that she would take lunch and that she would read the judgment of Knox, the affidavits and other material.

Court resumed at 2:00pm. Her Honour started by looking at the defendant's submissions. The defendant provides examples in the submissions of how the particulars have not been complied with. Mr Saidi gave the example of the particulars of duty of care alleged in paragraph 1 of annexure E to the affidavit of Evangelos Manollaras dated 28 July 2009. He said that that was not adequate. Some children were placed in Bethcar by court order some were not. Did the duty of care arise as regulator or some other form? Was the duty a non-delegable duty? Each child is in a different legal category. Is it alleged that the funding of Bethcar created a legal obligation? Is the defendant being attacked because it was the regulator or because it did not investigate? Children in Bethcar before 1980 were in a different position.

Mr Saidi referred to the requests for particulars made by the defendant. The defendant has asked the plaintiff the nature and scope of the duty and whether the duty arises through the common law or by a statute.

The plaintiff indicated that the duty of care arose when children were placed in Bethcar.

The plaintiff again attempted to have the matter transferred to Knox (at approximately 3:00pm). Mr Saidi objected. Mr Saidi indicated that they were making progress. He agreed to refine the issues to speed up the process. He said that the key issues were breach of duty of care and vicarious liability. Knox's order was clear, the plaintiff was to provide particulars for each plaintiff. Her Honour indicated that she was not prepared to enter into argument about what Judge Knox meant.

The plaintiff argued that it had already formulated the duty of care and that was in paragraph 1 of annexure E to the affidavit of Evangelos Manollaras dated 28 July 2009. The plaintiff said that the duty of care arose in the circumstances that the children came to be in Bethcar. There was a common law duty to observe a statutory obligation. Judge Truss suggested that an order be made that "the plaintiff in each case is to precisely identify the statutory obligation by way of legislation and the parts and sections of the legislation". The plaintiff indicated it was happy with that.

Mr Saidi indicated that the next issue was vicarious liability. Her Honour asked if the Gibson's was employees of the defendant. The plaintiff said that there was not an employment

relationship. Instead it was because they were the defendant's agents. Mr Saidi asked how the defendant was responsible for the Gordons and the Gibsons. He asked how did vicarious liability arise and what were the facts and circumstances.

In relation to the issue of vicarious liability Her Honour suggested that an order be made as follows:

"The plaintiff asserts that the following persons were agents of the defendant:

-Mr Gordon

-Mrs Gordon

-Mr Gibson

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Identify the material facts and circumstances supporting the claim for vicarious liability".

Her Honour also suggested that an order be made for the provision of quantum particulars:

"15 separate UCPR Rule 15.12 particulars be filed and served in relation to each plaintiff. Such particulars are to be provided as the plaintiff's solicitor's instructions permit and to attach as much supporting documentation as possible".

The plaintiff indicated it would need 6 weeks to provide the particulars.

Her Honour said that she would draft the orders and distribute them to the parties. The parties have liberty to apply for 7 days after provision of the orders. After that the orders take effect.

Her Honour vacated the directions hearing listed on 16 November 2009, and listed the matter for directions on 8 December 2009 before the Judicial Registrar.

Costs were reserved.

I have ordered the transcript.