

**IN THE DISTRICT COURT
AT WAITAKERE**

**CIV-2016-090-000639
[2017] NZDC 7224**

BETWEEN	GEORGE CHARLIE BAKER Plaintiff
AND	DEPARTMENT OF CORRECTIONS First Defendant
AND	S TUIPOLOA Second Defendant
AND	A CONNELLY Third Defendant

Hearing: 31 March 2017

Appearances: Mr Norris for the Plaintiff
Mr McCoubrey and Ms Wilson for the Defendants

Judgment: 7 April 2017

DECISION OF JUDGE G M HARRISON

The proceedings

[1] Mr Baker was convicted of the crime of murder and in December 2006 was sentenced to life imprisonment.

[2] On 27 August 2009 he took another prisoner hostage, the incident lasting for 11 hours. Mr Baker was in possession of a number of weapons. At the conclusion of the incident he was handcuffed and, as he was about to be escorted out of the area of the incident, paragraph 3 of the amended statement of claim alleges “Mr Baker was taken to the ground”.

[3] Paragraph 4 alleges “Mr Baker suffered severe bruising and loss of hearing from the incident.”

[4] On 16 October 2015 Mr Baker alleges he was again assaulted. His allegation related to the second and third defendants and was that two M/U staff assaulted him and caused bodily injury – “by holding and slamming the food slide door on to my hand ...”

[5] He raises various causes of action, being:

- (i) negligence by the Department of Corrections;
- (ii) breach of the New Zealand Bill of Rights Act 1990 – s 9 – the right not to be subjected to torture or cruel treatment;
- (iii) breaches of the Corrections Act 2004 for use of force where circumstances making the reasonable use of force permissible, did not exist; and
- (iv) common assault.

[6] The Department raises defences to all causes of action, and in particular pleads that both claims are barred by s 317 of the Accident Compensation Act 2001 which provides that no person may bring proceedings in any court in New Zealand for damages arising directly or indirectly out of personal injury covered by the Act.

[7] The Department also pleads that the 2009 incident is barred by the Limitation Act 1950.

[8] Mr Baker first commenced proceedings in the Auckland District Court on 10 August 2011. The Department filed a response on 30 September 2011. By the District Court Rules 2009 Mr Baker was then required to file his information capsule by 15 November 2011 which he failed to do. That resulted in that claim being deemed to be discontinued under rr 2.14.4 and 2.14.6 of the 2009 Rules.

[9] The present claim was commenced in the District Court at Waitakere on 21 June 2016.

The strike out application

[10] The claim in respect of the incident of 2009 appears to be statute-barred. The proceeding was commenced more than six years after it is alleged to have occurred.

[11] Section 4(7) of the Limitation Act 1950 provided that an action in respect of bodily injury to any person could not be brought after the expiration of two years from the date on which the cause of action accrued, unless it was brought with the consent of the intended defendant, or in the absence of consent by leave of the Court before the expiration of six years from that date.

[12] The defendant's consent was not sought, neither was leave sought from the Court and on the face of it, that claim is barred as an abuse of the process of the Court. See *Murray v Morrel & Co Limited* [2007] 3 NZLR 721; *Ross v McKay* [2014] NZHC 2694.

[13] Without finally determining that issue, however, I am of the view that both claims are barred by s 317 Accident Compensation Act 2001.

[14] Section 317 provides:

317 Proceedings for personal injury

(1) No person may bring proceedings independently of this Act, whether under any rule of law or any enactment, in any court in New Zealand, for damages arising directly or indirectly out of—

(a) personal injury covered by this Act ...

There are exceptions to that prohibition, none of which are relevant in this case.

[15] “Personal injury” is defined in s 26 as:

26 Personal injury

(1) Personal injury means—

...

(b) physical injuries suffered by a person, including, for example, a strain or a sprain; ...

Again, there are exceptions, none of which are relevant to this case.

[16] Both the 2009 and 2015 incidents are claims by Mr Baker that he suffered personal injury, for which there is cover under the Act.

[17] However section 121 of the Act provides that the Corporation must not provide any entitlements to a claimant, nor is it required to undertake any assessments or to make any payments to a claimant, while the claimant is a prisoner in any prison.

[18] It is quite clear that s 317 bars any claim for damages based on personal injury, supported by s121 which precludes Mr Baker from receiving accident compensation while he is in prison, and the statement of claim therefore discloses no reasonably arguable cause of action.

[19] It must be noted that s 317 does not bar claims for exemplary damages which are preserved by s 319. However, there is no cause of action in the amended statement of claim seeking exemplary damages. Neither are there any circumstances disclosed in the amended statement of claim which might establish the possibility of such a claim.

[20] The causes of action are clearly untenable – *Attorney-General v Prince and Gardiner* [1988] 1 NZLR 262.

[21] “The statement of claim must be beyond repair. It must be plain that even if it is reformulated the claim cannot succeed.” *Van Soest v Residual Health Management Unit and Ramstead* [2000] 1 NZLR 179 at [7]. That is the case here.

[22] Consequently the amended statement of claim of 30 August 2016 is struck out.

[23] That makes it unnecessary to consider the further submissions of the Department as to whether causes of action arise for alleged breaches of the New Zealand Bill of Rights Act 1990 and the Corrections Act 2004, and whether there is a recognised civil cause of action in respect of common assault.

[24] There is also the possible immunity available to the second and third defendants pursuant to s 86 State Sector Act 1988, but again no decision in that regard is called for.

[25] The Department is entitled to costs assessed on a 2B basis to be determined by the registrar.

G M Harrison
District Court Judge