

Daniels v NTA [2007] NTSC 65

PARTIES DANIELS v NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT SUPREME COURT OF THE NORTHERN TERRITORY
OF AUSTRALIA AT DARWIN

JURISDICTION Civil
FILE NUMBER 76 of 2005 (20513869)
DELIVERED 30 August 2007
HEARING DATE 25 July 2007
REASONS OF The Master

CATCHWORDS

STATUTES – Northern Territory – Police Administration Act -
Section 148 F(2) – punitive damages – leave to join police member

CASE FOLLOWED

Lackerstein v Jones (1988) 96 FLR 6

REPRESENTATION

Solicitors:

Plaintiff NAAJA
Defendant Hunt & Hunt

Judgment category classification

Judgment ID number mas1507

Number of pages 3

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT DARWIN

No. 76 of 2005 (20513869)

BETWEEN:

DAVID DANIELS
Plaintiff

and

**NORTHERN TERRITORY OF
AUSTRALIA**
Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered: 30 August 2007)

- [1] The plaintiff claims damages for assault and battery, false imprisonment, malicious prosecution and defamation arising out of his arrest, or purported arrest, by police officers on 30 April 2005. It is alleged that the plaintiff intervened in a fight involving police officers and members of the community in an attempt to stop the fight but was subsequently arrested for assaulting and hindering police, notwithstanding his lack of intent. He was later released without charge. The defendant is alleged to be vicariously liable for the actions of the police officers. The claim includes damages for aggravated and exemplary damages.
- [2] The defendant admits vicarious liability, but alleges that the plaintiff was lawfully arrested pursuant to section 123 of the Police Administration Act and lawfully detained pursuant to section 137, the police officers believing, on reasonable grounds, that the plaintiff had committed the offences of assaulting and hindering the police officers in the execution of their duty. It is pleaded that the plaintiff is not entitled to aggravated or exemplary damages by reason of the provisions of section 19 of the Personal Injuries (Liabilities and Damages) Act 2003. The effect of this provision was not the subject of argument in this application. It may be noted that section 148C (3) of the Police Administration Act provides that the Territory's vicarious liability does not extend to liability to pay damages in the nature of punitive damages.
- [3] The plaintiff has applied to join four police officers as defendants, namely Lindfield, Enguell, Joran and Henrys. Section 148F (2) of the Police

Administration Act provides that a person who makes a police tort claim may join the police member who allegedly committed the tort as a party to the proceeding only if the Territory denies vicarious liability for the alleged tort or if the court grants leave to include a claim for damages in the nature of punitive damages. A “police tort claim” is defined as a claim for damages, including a claim in the nature of punitive damages committed by a member in the performance or purported performance of duties as a member. Presumably, “punitive damages” equate to exemplary damages, being awarded to punish and deter, and mark the disapproval of the court, where the conduct of the defendant shows a conscious and contumelious disregard for the plaintiff’s rights (see *Lackerstein v Jones* (1988) 92 FLR 6, 40-42).

- [4] Section 148F(2) is contained in Part V11A of the Act and needs to be read in the context of that Part, which provides protection to members of the Police Force against civil liability. Section 148B provides that a member is not civilly liable for an act done or omitted to be done in good faith in the performance or purported performance of duties as a member. Instead, section 148C provides that the Territory is vicariously liable for a tort committed by a member in the performance or purported performance of duties as a member. These sections prevent claims against members except where the court grants leave, which suggests that there must be, at least, some demonstrable ground for leave to be granted.
- [5] It is alleged in the proposed statement of claim that Lindfield, Enguell and Joran directed or procured, or actively encouraged, Henrys to order the arrest of the plaintiff, which he did. It is further alleged, in support of a claim for aggravated and exemplary damages, that the Henrys knew, or ought to have known, that there were insufficient grounds for the formation of a reasonable belief that the plaintiff had committed an offence, and that Lindfield, Enguell and Joran were activated by spite and malevolence against the plaintiff, in colluding to furnish statements that cast the plaintiff as an assailant hindering police, and in directing Henrys to order the arrest of the plaintiff when they knew that the plaintiff did not have the requisite intent. It is arguable that these allegations, if proved, could sound in punitive damages.
- [6] It is admitted that the plaintiff is the President of the Community Government Council and a person of high repute in the community. The evidence discloses that, following the melee, the plaintiff took the persons involved to the police station so they could give themselves up to the police, but, although there was a discussion with police, no action was taken. The decision to arrest the plaintiff was made by Henrys the following day, based on information contained in statutory declarations made by Lindfield, Enguell and Joran, in which they stated that the plaintiff

had pushed them in the chest during the course of the melee. The arrest was carried out by other officers.

- [7] The evidence suggests that the plaintiff, and others, were attempting to assist, rather than hinder, the police, who were in a dangerous situation. There is no dispute that the plaintiff pushed Lindfield, Enguell and Joran in the chest, but, he says that this happened in the course of his attempts to stop the fight, and this appears to have been accepted by Henrys after the plaintiff was arrested and interviewed.
- [8] The statements made by Lindfield, Enguell and Joran and relied on by Henrys disclose grounds for the arrest of the plaintiff. It is argued on behalf of the plaintiff that they intentionally portrayed him in a false light by failing to mention that he had been attempting to assist the police, both in the course of the melee, and afterwards, when he took the persons involved to the police station so that they could give themselves up. There is no direct evidence that supports this contention, but it is suggested that it may be inferred from the similarities in their statements. There are similarities that suggest that the statements were made in consultation, but this does not necessarily suggest collusion with the object of having the plaintiff arrested and charged. On the evidence available, this conclusion is implausible.
- [9] I am not persuaded that there are sufficient grounds for an award of punitive damages. It follows that leave to join additional defendants should be refused.
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