Briggs v James Hardie & Co Pty Ltd (1989) 16 NSWLR 549

https://lawcasesummaries.com/knowledge-base/briggs-v-james-hardie-co-pty-ltd-1989-16-nswlr-549/

Facts

- Mr Briggs was employed by a company which was (at the time) called Asbestos Mines Pty Ltd and then called Marlew Mining Pty Ltd (**Marlew**).
- The company was originally a “joint venture company”, being half owned by James Hardie & Co Pty Ltd and James Hardie Industries Pty Ltd (**Hardies**), and the other half owned by Seltsan Ltd (**Wunderlich**); in 1953 Wunderlich transferred its half interest in the company to Hardies.
- Briggs claimed to be suffering from asbestosis after working with Marlew.
- Briggs had run out of time under the *Limitations Act 1969* (NSW) (the Act) to bring a claim against Marlew. He applied for an extension of time in the NSW District Court but it was rejected.
- Briggs appealed and sought an extension of time to bring a claim against not only Marlew as his ostensible employer, but against the Hardies and Wunderlich as his true employer.

Issues

- Was Briggs entitled to an extension of time?
- Was Briggs entitled to bring an action against the Hardies and Wunderlich, and not just Marlew?

Held

- Because s 58 of the Act is a remedial provision and should be construed liberally, an application for extension of the limitation period in respect of multiple defendants should be granted, at least in actions in negligence.
- This can occur where the applicant has evidence to establish a prima facie case against at least one defendant and also has evidence pointing to the possibility of a cause of action against another or other defendants.
- A writ of certiorari was granted to quash the decision and remit the matter back to the District Court for review.

Corporate Veil

- At pages 567 - 576, Rogers A-JA meticulously discusses the principles of "piercing the corporate veil" in Australia (at the time).

Quotes

- "...the relationship between Asbestos, Hardies and Wunderlich was no different from the everyday situation of a holding company and its fully owned subsidiary. In everything but name, the two are as one. The holding company customarily exercises complete dominion and control over the subsidiary. There is little difference in the situation when, instead of a holding company and a fully owned subsidiary, there are two shareholders who utilise a third company as the joint venture vehicle. In essence, then, the submission for Hardies and Wunderlich was simple. If it were to be held that during the period of joint shareholding by Hardies and Wunderlich, and later by Hardies by itself, they were the principal, and Asbestos, the agent, then that conclusion could apply in relation to just about every holding company and fully owned subsidiary and the principle of limited liability in relation to the activities of subsidiaries would be left in tatters."

  (Rogers A-JA at page 567)

Free Text

The full text is available here: https://jade.io/citation/2755159
