Judgment Summary
Supreme Court
New South Wales

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 22) [2019] NSWSC 1657

Beech-Jones J

The Supreme Court has found for the plaintiff, Rodriguez & Sons Pty Ltd, in its claim in negligence against three defendants, Queensland Bulk Water Supply Authority trading as Seqwater ("Seqwater"), SunWater Ltd ("SunWater") and the State of Queensland (the "State") for damages arising out of the flooding of its store in suburban Brisbane in January 2011.

In early January 2011, the Brisbane River Basin experienced extensive rainfall, culminating in extreme downfalls from 9 to 11 January 2011. On 11 and 12 January 2011, there was flooding of many homes and businesses as a result of the Brisbane River, the lower Bremer River and Lockyer Creek breaking their banks. Of the recorded peak flow on the Brisbane River at Moggill, at the height of the flooding somewhere between 39% and 51% of the flow was attributable to releases made from Wivenhoe Dam.

The plaintiff conducted a retail sporting goods store in Fairfield, Brisbane. Its store was inundated on 12 January 2011. Its premises and stock were damaged. It was closed for many months. It brought a representative action on behalf of approximately 6870 persons or entities that held an interest in land and suffered loss or damage from the inundation of floodwater, had their use and enjoyment of that land interfered with by floodwater, or owned personal property that was situated on land that was inundated. Each of the plaintiff and the group members had either entered into an agreement with a particular litigation funder or their insurer had done so.

The plaintiff sued the three defendants, who were said to be legally responsible for the actions of four flood engineers who were responsible for conducting flood operations at Wivenhoe Dam and Somerset Dam from 2 January 2011 to 11 January 2011. Seqwater was the owner of the Dams and the employer of two of these flood engineers. SunWater was contracted to provide flood management services to Seqwater and was the employer of one of the four flood engineers. The State employed the fourth and final flood engineer. The plaintiff sued the three defendants in negligence, nuisance and trespass.

In conducting flood operations during the January 2011 Flood Event, the flood engineers were effectively obliged to abide by the Dams' flood mitigation manual (the "Manual"). The Manual required the flood engineers use rainfall forecasts to select flood strategies and to guide releases. It also required the flood engineers to prioritise dam safety and the avoidance of urban flooding over the effects on rural communities of inundating rural bridges. The Court found that the flood engineers failed to comply with the Manual in these

and other respects and that this, in turn, meant that by 11 January 2011 they were forced to make large releases of water to ensure Wivenhoe Dam did not fail. The Court found that the impugned actions of the flood engineers during the January 2011 Flood Event were not reasonable mistakes made in the heat of the moment, but systemic failures to apply the Manual that they had drafted.

The Court found that the flood engineers owed a duty of care to a class of persons that included the plaintiff and the group members. In operating the Dams, they exercised significant control over downstream flows and the risk of flooding that these flows presented. Members of the class were vulnerable and the class, despite its size, was not indeterminate. Each defendant was found to be vicariously liable for the actions of the flood engineers they respectively employed. The Court found that each of the flood engineers' conduct of flood operations was not to the standard of a reasonably competent flood engineer and that they therefore breached the duty of care they owed to the plaintiff (and group members). The plaintiff's claims in nuisance and trespass were unsuccessful.

The Court accepted three of the simulated alternative flood operations put forward by the plaintiff's expert as representing the flood operations that a reasonably competent flood engineer would have undertaken during the January 2011 Flood Event ("Simulations C, F and H"). All the simulations were premised on a methodology of conserving dam storage capacity when forecasts pointed to rainfall and then using dam storage capacity to ensure peak releases did not coincide with heavy downstream flows in times of substantial rainfall. The Court accepted that the simulations were consistent with the Manual. Of the three simulations, Simulation C commenced the earliest and it was the basis for addressing the issue of causation.

Using a two-dimensional numerical hydraulic model of the Brisbane River catchment and other evidence of the effects of the January 2011 Flood Event, the plaintiff sought to demonstrate that its store would not have been inundated had the flood engineers undertaken flood operations in accordance with the simulated flood operations advanced by the plaintiff's expert. The Court accepted that contention and found that the level of flooding that would have been experienced under Simulation C would not have inundated the plaintiff's store and the homes of a number of other group members whose cases were also heard in part during this phase of the proceedings.

The Court held that the quantum of the plaintiff's damages (and the damages of the other group members) is to be reduced to the extent that they seek recovery of a cost in respect of which they previously received a grant from the Queensland Rural Adjustment Authority under the "Special Disaster Assistance (November 2010 to January 2011) Scheme". The Court held that the plaintiff could recover the commercial cost of a "mud army" of volunteers who cleaned and repaired its store and stock.

All the cross-claims between the defendants failed.

The proceedings were adjourned until February 2020 to allow the parties to consider the judgment and plan the next phase of the litigation.